

# ACA International Ethics Committee Review Rules

(adopted March 18, 2014)



**ACA**<sup>TM</sup>

INTERNATIONAL  
The Association of Credit  
and Collection Professionals



# ACA International Ethics Committee Review Rules

The Ethics Committee Review Rules shall be construed and applied consistent with the following Canons:

- Canon 1:** When necessary, ambiguity in any application of these Rules shall be resolved by balancing the interests of fair and equitable treatment of the Participants, the interests of the general public and the credit and collection industry as a whole, the mission of the Association and efficient administration.
- Canon 2:** No action taken under these Rules shall be influenced by malice toward the Participants, bad faith, illegal prejudice, or anticompetitive purpose.
- Canon 3:** Rules shall be given effect and the Committee and Administrator shall exercise discretion only in a manner consistent with the Association’s Bylaws, Standard Operating Procedures and Board-approved Committee Charter.
- Canon 4:** The impartiality and integrity of the process shall not be compromised in any application of these Rules.
- Canon 5:** The Association condemns coercive or retaliatory action on the part of Members against any individual or organization seeking to assert their rights under these Rules.
- Canon 6:** The Rules are intended to ensure procedural fairness to Members with respect to Code violation allegations. These Rules shall not create substantive rights on the part of non-member Participants nor expand the rights of any Member.

## **Rule 1.0 Rules of General Application**

### **Rule 1.1 Terminology**

As referenced within these Rules, the following terms shall have the meanings provided below:

- “Administrator” The Ethics Committee Staff Liaison as designated within the Committee Charter.
- “Aggrieved” A specific individual or organization claiming harm resulting from a Member’s alleged Code violation.
- “Association” ACA International.
- “Board” The Association’s Board of Directors.
- “Chair” The Chairperson of the Ethics Committee.
- “Code” The Association’s official code governing member conduct as may be amended or superceded by the Board, including the Association’s “Code of Conduct”. When referenced within these Rules, the applicable Code shall be the code in force and effect at the time the alleged violation occurred.

“Committee”	The Association’s Ethics Committee.
“Consumer Complaint”	A communication from a Consumer which relays a concern regarding a wrongful act or omission related to a Member’s participation in the credit and collections industry.
“Guidelines”	The ethics process guidelines promulgated by the Administrator which set forth for Committee Members, Board Members, Association employees, Members and other Participants, the purpose of which are to ensure a consistent and efficient manner and method of communicating information relevant to reviewing Code violation allegations.
“Member”	An individual or entity who has applied and has been accepted for membership in the Association, and who remains an active member; a Member may also mean an individual employee, officer or director of a Member company.
“Participant”	A Member, Reporter or Consumer Complainant.
“Report”	A written communication alleging wrongful acts or omissions related to participation in the credit and collections industry.

**Rule 1.2 Member Notice - Manner of Delivery**

For all notices required to be sent to members, e-mail notification to the ethics contact e-mail address on file with ACA shall be deemed proper and sufficient. If the Administrator’s e-mail notification is returned or rejected, or if the Administrator is unable to determine a proper ethics contact e-mail address, notice shall be proper if mailed to the last known ethics or main company contact postal address on file with the Association.

**Rule 1.3 Administrator’s Authority to Delegate**

The Administrator may delegate his or her responsibilities under these Rules to an appropriate Association staff person.

**Rule 1.4 Administrator’s Authority to Establish Process Guidelines**

The Administrator shall have the authority to promulgate ethics process guidelines which specify the manner, method, form and timing of communication of information between and among Members, Participants, the Chair, Committee, Administrator, Board of Review and the Board in accordance with these Rules. Such Guidelines shall be made available in writing or electronically to the Participants. Participants engaged in any ethics process under these Rules shall be expected to comply with the Rules and the Guidelines promulgated in accordance therewith. This Rule does not prohibit the publication of the Guidelines to the general public.

**Rule 1.5 Termination of Committee Handling**

If during the consideration of any Report, the Chairperson is notified that the membership status of the Member who is the subject of such Report has become inactive, the Chairperson in his or her discretion may terminate Committee consideration of the matter. The Ethics Committee may in appropriate circumstances issue a written recommendation to the Association that the matter be further considered prior to the Association’s approval of any membership re-application during the 12-month period following the effective date of membership inactivity. Notice of incomplete Committee handling of any matter under these Rules due to a change in membership status shall be provided promptly to the Member and any Aggrieved Reporter and a copy of any written Committee recommendation regarding re-application shall be provided to the Member.

### **Rule 1.6 Committee Discretion - Proofs**

The Committee shall be empowered to judge the credibility of Participants and witnesses to proceedings under these Rules and as to the authenticity, weight, and sufficiency of documents, exhibits, testimony or other evidence submitted for consideration.

### **Rule 1.7 Confidentiality**

Except in response to (1) proper valid legal process demanding production; (2) an official request from the Board of Review or the Board of Directors establishing a need for the information; or (3) in the case of an appeal requiring Board of Review consideration pursuant to Rule 5.0, Committee member notes, investigation reports, memoranda, and correspondence between and among Committee members and the Administrator or Legal Counsel, shall remain confidential. A member of the Committee or employee of the Association must not disclose to any individual, information obtained by that member or employee concerning a matter governed by these Rules except as required to carry out an investigation or take official action in a matter as authorized by these Rules.

### **Rule 1.8 Indemnification**

Committee members, Members of the Board of Review or Board of Directors, Association employees, and Legal Counsel shall be indemnified and held harmless by all Participants for any act or omission performed in the course of or arising out of performance of their official duties pursuant to these Rules or any Guidelines promulgated in accordance therewith.

### **Rule 1.9 Legal Counsel**

The Association's General Counsel or his or her attorney designee will serve as the legal counsel to the Ethics Committee, having no right to vote.

### **Rule 1.10 Attorney-Client Privilege**

Communications between the Committee and legal counsel or the Board and legal counsel related to any matter governed by these Rules shall be accorded attorney-client privilege.

### **Rule 1.11 Disclosure**

Disclosures by the Association staff, the Administrator, Committee members or members of the Board of Review or Board of Directors regarding the handling of a matter governed these Rules is prohibited, except to the limited extent disclosure is necessary for fair and proper administration or as otherwise specifically provided in these Rules.

### **Rule 1.12 Information Requests**

Upon request, the Administrator may, at his or her discretion and with the advice of Legal Counsel, disclose general non-privileged information about Committee matter handling but only in a manner which does not identify or allow a recipient to identify any particular individual or organization involved. Examples of such information may include summary or aggregate data or redacted documents. This provision does not create any right in the requestor to such information nor obligate the Administrator to respond to requests which may pose an unreasonable burden to the Association.

### **Rule 1.13 Committee Meetings - Confidential**

All Committee Meetings involving the application of these Rules shall be conducted confidentially, and all minutes recording the Committee's activity shall also remain confidential.

### **Rule 1.14 Rules Effective Date**

These Rules shall be effective for all Reports and Complaints received after the date of first publication upon adoption by the Board.

### **Rule 1.15 Opportunity to be Represented by Counsel**

All Members who have been notified of Code violations may choose, but are not required, to be represented by legal counsel when responding to the Committee.

## **Rule 2.0 Reports of Code Violations**

### **Rule 2.1 Authority**

The Administrator and the Committee shall have authority to process Reports concerning alleged Code violations by Members.

### **Rule 2.2 Non-Member Reports**

Neither the Administrator nor the Committee shall have authority to accept Reports concerning acts or omissions of a non-Member, which shall be deemed non-actionable.

### **Rule 2.3 Authority**

The Chairperson in his or her discretion shall have the independent authority to initiate a Report under this Rule upon receipt of reasonably reliable information establishing a Code violation has occurred. Unverified information from anonymous sources, or from sources who refuse to allow disclosure of their identity, absent additional information or other compelling circumstances, shall not be considered reasonably reliable information under this Rule.

### **Rule 2.4 Member Notice**

Unless initially deemed non-actionable pursuant to Rule 2.6, the Administrator shall promptly notify any Member who is identified as the subject of a Report with a notice that the Report will be processed in accordance with these Rules and Guidelines.

### **Rule 2.5 Notice to Reporter**

The Administrator shall notify the Reporter that the Report will be processed in accordance with these Rules and Guidelines. Any individual submitting a Report which in whole or in part is deemed non-actionable shall be provided with the reason therefore.

### **Rule 2.6 Non-Actionable Reports**

The Chair or the Administrator may deem Reports, or portions thereof, non-actionable based on the following reasons:

- a. Reports concerning Non-Members;
- b. Inability to ascertain the portion of the Code allegedly violated; or the allegations contained within the Report, even if true, would not constitute a violation of the Code;
- c. The Report contains insufficient information to identify the Member;
- d. The Report was received from an individual or organization who requests to restrict disclosure of their identity or the Report appears to be based solely on second-hand information, and the reporting party is unable to provide or identify sources of reliable supporting information;

- e. The Report involves matters deemed personal in nature (i.e., not arising out of, or directly related to, credit and collection industry activity);
- f. The Report involves a subject for which specialized or technical expertise is required in order to determine whether conduct was wrongful;
- g. A determination as to whether the conduct was in violation of the Code cannot be made without a legal interpretation of state law;
- h. The Report involves a general business matter not specific to the credit and collections industry (ex: licensing agreements, intellectual property infringement, real estate matters);
- i. The Report seeks Association involvement with respect to an individual's terms and conditions of employment;
- j. The Report contains insufficient information to support investigation;
- k. The lapse in time intervening between the conduct and the Report thereof substantially hinders investigation efforts and prejudices the information thereby obtained;
- l. The Report merely re-states allegations previously deemed non-actionable or were otherwise disposed of;
- m. The Report involves allegations or factual matters which are currently the subject of a judicial, formal dispute resolution, regulatory, enforcement or other similar proceeding. In these cases the Committee may consider information arising from such a proceeding only after a final disposition in the underlying proceeding.

### **Rule 2.7 Investigations**

The Chair shall determine whether a Report will be accepted for investigation, which shall be commenced promptly by the Committee or the Administrator after acceptance. The Member who is the subject of the Report shall be notified of the portion(s) of the Code allegedly violated, that the Member's conduct is the subject of investigation and the Member shall be provided an opportunity to respond thereto. The Committee shall make reasonable efforts to complete its investigation within 90 days of acceptance.

### **Rule 2.8 Committee Expectations**

After a Report has been accepted for investigation, and when practical, the Administrator should advise the Member who is the subject of the Report of the following Committee expectations:

1. The Member is expected to take immediate steps to identify whether a continuing course of conduct may constitute an ongoing Code violation and, when necessary, proactively seek to bring the conduct in conformity with the Code;
2. If an Aggrieved Reporter has alleged a personal harm arising out of the reported conduct, the Member is expected to make a good faith attempt to resolve the dispute directly with the Aggrieved;
3. The Member is expected to notify the Administrator or the Committee, as the case may be, of its efforts in furtherance of resolving the Aggrieved's alleged personal harm and cessation of activity not in conformity with the Code.

The Administrator shall further notify an identified Aggrieved Reporter—other than a Consumer—of the Committee's expectation that he or she cooperate with any Member communications in furtherance of the Member's responsibilities under this Rule.

### **Rule 2.9 Determinations**

Subsequent to an investigation pursuant to Rule 2.7, determinations as to whether a Code violation has occurred and the section of the Code violated shall be decided at Committee meetings and communicated in writing to the Member as soon as practicable upon completion of an investigation. The Committee shall dispose of the Report by majority vote in accordance with Rule 2.9.1 or 2.9.2 as appropriate.

Rule 2.9.1 If the Reporter is not an Aggrieved, the Committee may dismiss the Report without sanction or may impose sanctions in accordance with Rule 4.0.

Rule 2.9.2 If an Aggrieved Reporter - other than a Consumer - has alleged a personal harm arising out of the conduct forming the basis for a Code violation determination, the Committee shall:

- (i) notify the Aggrieved Reporter of the section of the Code violated; and
- (ii) consider sanctions against the Member in accordance with Rule 4.0; and
- (iii) issue to the Member an Order to Redress the Aggrieved Reporter's personal harm related to the subject conduct. It is not within the Committee's authority to control the Participants' private resolution or the specific nature and form of the redress. An Order to Redress shall specify the amount of time for the Member's compliance; if the Participant(s) thereafter notify the Administrator that they have not negotiated a resolution, the Committee shall review the Member's attempts to comply with the Order and determine whether the Member's conduct in relation to the Order warrants sanction, or further sanction as the case may be, pursuant to Rule 4.0. When making sanction determinations in accordance with Rule 4.0, if applicable, the Committee may consider (a) the satisfaction or dissatisfaction of the Aggrieved; (b) notification from the Aggrieved that the dispute has been resolved or that the Aggrieved no longer desires Association involvement; (c) the cooperation and communication or lack thereof on the part of the Member and the Aggrieved as it concerns the Order. At the Committee's discretion, the Aggrieved may be notified of the fact that the matter was further considered by the Committee pursuant to Rule 4.0; thereafter with respect to the Aggrieved's personal harm, the Committee has no further jurisdiction.

## **Rule 2.10 Appeals**

Code violation determinations under this Rule may be appealed to the Board of Review pursuant to Rule 5.0.

## **Rule 3.0 Consumer Complaints**

### **Rule 3.1 Authority**

The Administrator shall have authority to receive and re-direct or forward Complaints from Consumers regarding Member Conduct. Neither the Administrator nor the Committee shall have authority to receive Complaints concerning acts or omissions of a non-Member, which shall be rejected.

### **Rule 3.2 Notice to Member**

The Administrator shall promptly re-direct any Complaint received by the Association by either forwarding the Complaint to the Member directly or providing the Member's contact information pursuant to Rule 1.2 to the Consumer.

### **Rule 3.3 No Authority to Intervene**

Thereafter, neither the Administrator nor the Committee shall have authority to intervene in the Complaint resolution between the Complainant and the Member.

### **Rule 3.4 Relation to Other Rules**

Code violations identified in Consumer Complaints may also be handled, in whole or in part as appropriate, in accordance with Rule 2.3, in which case the Consumer shall not be considered an 'Aggrieved'.



## **Rule 4.0    Sanctions**

### **Rule 4.1    Authority**

The Committee shall have the authority to impose sanctions for Member conduct pursuant to Rule 2.9.

### **Rule 4.2    Sanction Requests, Recommendations or Suggestions**

The Committee shall independently exercise its discretion with respect to member sanction determinations; namely, Committee members shall be free from undue influence of unsolicited requests, recommendations, or suggestions for any sanction against a Member. This Rule shall not interfere with legal counsel's ability under Rule 1.9 to provide advice to the Committee.

### **Rule 4.3    Sanction Determinations**

The Committee may make sanction determinations based upon the information available to the Committee pursuant to a majority vote. In making sanction determinations, the Committee shall consider, when such information is available, relevant and applicable: (a) the existence of any aggravating or mitigating circumstances; (b) prior sanction proceedings, when known; (c) cooperation with the process; (d) the committee's handling of prior member sanction matters involving substantially similar findings; (e) whether the Member has violated a duty owed to a client, to a consumer, to the Association, or to the profession; (f) whether the Member acted intentionally, knowingly, or negligently; (g) the amount of the actual or potential injury caused by the Member's conduct; (h) the pervasiveness, duration, or isolated nature of the conduct; (i) whether the Member has taken remedial action to cure the violation or harm including efforts to prevent future occurrences; and (j) advice of legal counsel.

### **Rule 4.4    Manner of Sanction**

Sanctions may include the following, the severity of which shall be reasonably commensurate or related to the nature and severity of the harm, injury, prejudice, or violation: (a) warning/caution/admonition; (b) issuance of a plan for corrective action; (c) mandatory educational or professional training program fulfillment; (d) temporary or permanent removal from any Association representative capacity or role including committee member, officer, director, instructor, speaker; (e) temporary suspension of all or specified membership rights, privileges, or benefits, including the right to vote; (f) expulsion; (g) other reasonable and equitable sanction not specified herein as may be deemed justified under the circumstances. For temporary sanctions imposed, the Committee shall determine the effective suspension period, which may be a definite period, or may be contingent on specified Member action(s).

### **Rule 4.5    Review of Committee Determination Required**

For all sanction determinations made based on Committee action pursuant to Rule 2.3, the Committee shall be required to submit its recommendations to the Board of Review. A copy of the request for such review shall be sent by the Administrator to the Member and shall contain the following information:

1. A copy of all notices provided to the Member as required under Rule 2.0;
2. A summary of the Committee's investigation;
3. A copy of the documents considered by the Committee in rendering its determination and a summary of any other information considered which is not in documented form;
4. A statement of Committee findings;
5. The Committee's specific recommendation for sanction under Rule 4.4 and a statement articulating the basis therefore;
6. Such other information supporting the propriety of the Committee's recommendation.

No such sanction shall be effective or imposed prior to the Committee's receipt of the Board of Review's ruling. The Administrator shall comply with all reasonable requests for information from the Board of Review related to the recommendation. The Administrator may redact private or sensitive information deemed not critical to the Review. Subsequent Committee action must comport with the Board of Review's ruling. A Committee recommendation may be withdrawn at any time by providing notice to the Board of Review and the Member.

#### **Rule 4.6 Effective Date**

A sanction imposed pursuant to Rule 4.4(e) or (f) shall be effective not prior to the expiration of the affected Member's right to appeal the determination has passed, and in no case sooner than 15 days from the date of written notice of the sanction to the Member. The effective date for a sanction imposed pursuant to Rule 4.4 (e) or (f) may not be sooner than 5 days after the Member's opportunity to be heard orally or in writing under these Rules. All other sanctions imposed pursuant to Rule 4.4 shall be effective immediately or as may be otherwise specified by the Committee.

#### **Rule 4.7 Notice of Sanction**

- Rule 4.7.1 For all determinations made to impose sanctions, the Administrator shall provide reasonably prompt notice of the sanction to the affected Member, the effective date, and the basis for the Committee's determination including a statement conveying the findings of the Committee's investigation as well as notice of the right to appeal the decision to the Board of Review. The Administrator shall have the authority to communicate sanction information to Association staff in order to effectuate the outcome. The affected Member shall be entitled, upon written request made within the timeframe specified by the Administrator to receive a copy of the document evidence considered in the Committee's determination. For temporary suspension or removal sanctions pursuant to Rule 4.4, the Committee shall determine the suspension expiration date, which may be a date specific, or may be contingent on specified Member action(s).
- Rule 4.7.2 For sanctions imposed under Rule 4.4 (d), (e) or (f), notice thereof identifying the Member and the sanction imposed as well as a reference to the relevant portion of the Code violated, along with the sanction's effective date, may be published. For all other sanctions imposed under Rule 4.4, the sanction imposed, along with a summary of the conduct for which the sanction was imposed and a relevant Code reference may be published for the education of the profession, but the Member shall not be identified. Publication may be made in the Association's official publication and on the Association's website for a period of time specified by the Committee; thirty calendar days shall be presumptively reasonable. The Association shall not publish this notice prior to the expiration of the affected member's right to appeal the sanction determination.
- Rule 4.7.3 For sanctions imposed under Rule 4.4 (d), (e) or (f), a copy of the Notice issued to the Member may be sent to the President of the Association Unit to which the Member belongs as of the date of the Notice. The Notice shall be designated Confidential.

#### **Rule 4.8 Ineligibility for Membership**

In the case of expulsion, the Committee shall issue a written recommendation to the Association that a Member be deemed ineligible for membership in the Association for a period of 36 months after the effective date of the sanction or for such other shorter period of time deemed appropriate by the Committee. A copy of the recommendation shall be provided to the Member.

## **Rule 4.9 Right to Appeal**

Final sanction determinations under this Rule may be appealed by the sanctioned Member to the Board of Review pursuant to Rule 5.0.

## **Rule 4.10 Temporary Interim Suspension**

In addition to its authority under Rule 4.1, upon a Committee finding by majority vote that a Member's conduct which is the subject of a Report (a) poses a clear threat of serious and imminent financial, legal or reputational harm to the Association or to the public, and (b) the Member's continued access to Association membership benefits and privileges does or is reasonably likely to perpetuate such threat, the Committee may temporarily suspend the Member's membership pending a final outcome of the proceedings. Temporary interim suspensions:

1. are effective no sooner than 15 days' from the date of written notice to the Member setting forth the reasons for the temporary suspension;
2. shall not be effective unless the Member has had opportunity to be heard orally or in writing not less than 5 days' in advance of the effective date of the temporary interim suspension;
3. shall be terminated if the Committee becomes aware that the underlying basis no longer exists;
4. remain in effect until lifted by the Committee, or until the Committee imposes a final disciplinary sanction;
5. shall not in any event remain effective for longer than 120 days;
6. are non-appealable.

The imposition of temporary interim suspensions shall serve the purpose of maintaining public confidence in the credit and collection industry.

## **Rule 5.0 Appeals**

### **Rule 5.1 Method of Appeal**

Members affected by Committee determinations rendered pursuant to Rule 2.10 or 4.0 may submit a written appeal to the Board of Review within the timeframe specified by the Administrator which shall be no less than 30 days from the date of notice received by the Member. In the absence of any written procedure specified by the Administrator pursuant to Rule 1.4, the Member may make the appeal request to the Board of Review by mailing a detailed explanatory statement supporting the request for appeal to:

ACA International  
ATTN: Ethics Administrator  
4040 W. 70th Street  
Edina, Minnesota 55435

### **Rule 5.2 Withdrawal of Appeal**

A Member's request for appeal may be withdrawn at any time.

### **Rule 5.3 Notice of Appeal to the Board of Review**

Upon receipt of an appeal the Administrator shall promptly notify the Board of Review of the request.

**Rule 5.4 Board of Review Rulings**

If a member appeals a Committee determination, the Administrator shall provide the information available to the Committee in reaching its final determination to the Board of Review and comply with Board of Review requests consistent with the policy governing the Board of Review.

**Rule 5.5 Finality of Board of Review Rulings**

Decisions of the Board of Review shall be final and non-appealable. Subsequent Committee action must comport with the Board of Review's determination.