

University of Mississippi

eGrove

---

Association Sections, Divisions, Boards, Teams

American Institute of Certified Public Accountants (AICPA) Historical Collection

---

1964

## Trial board manual and disciplinary procedures

American Institute of Certified Public Accountants. Trial Board

Follow this and additional works at: [https://egrove.olemiss.edu/aicpa\\_assoc](https://egrove.olemiss.edu/aicpa_assoc)



Part of the [Accounting Commons](#), and the [Taxation Commons](#)

---

### Recommended Citation

American Institute of Certified Public Accountants. Trial Board, "Trial board manual and disciplinary procedures" (1964). *Association Sections, Divisions, Boards, Teams*. 419.

[https://egrove.olemiss.edu/aicpa\\_assoc/419](https://egrove.olemiss.edu/aicpa_assoc/419)

This Book is brought to you for free and open access by the American Institute of Certified Public Accountants (AICPA) Historical Collection at eGrove. It has been accepted for inclusion in Association Sections, Divisions, Boards, Teams by an authorized administrator of eGrove. For more information, please contact [egrove@olemiss.edu](mailto:egrove@olemiss.edu).

**TRIAL BOARD MANUAL  
AND  
DISCIPLINARY PROCEDURES**



**American Institute of Certified Public Accountants  
666 Fifth Avenue  
New York 19, New York**

## CONTENTS

	Pages
I. Purpose of manual; background	1
II. Responsibility for disciplinary action	1,2,3
III. Functions of committee on professional ethics	
(a) Receiving complaints and inquiries	3
(b) Interpreting rules and proposing changes therein	4
(c) Serving as a fact-finding body	4
(d) Prosecuting before trial board	4
(e) Composition of committee and investigative subcommittee	4
(f) Possible courses of action	4
(g) Prima facie cases; types of evidence deemed sufficient for action	5
(h) Offenses requiring expulsion or suspension	6,7
(i) Invitation to confer with committee usually sent to accused in advance of trial	8
(j) Cooperation with state societies and state boards	8
IV. Functions of the secretary of the Institute	
(a) Receiving reports of prima facie cases from ethics committee	2,9
(b) Summoning accused to trial	2,7,9
(c) Submitting matter of revocation of member's certificate to executive committee	8,9
V. Functions of executive committee	
(a) Terminating membership of member whose certificate is revoked	2,8,9,10
VI. Functions of trial board and sub-boards	
(a) Receiving complaints from	
(1) Committee on professional ethics	2
(2) Member preferring the complaint	4,10

	<u>Pages</u>
(b) Serving as judge and jury	10
(c) Appointment and composition of sub-boards	10
(d) Review of sub-board's decision	11
(e) Composition and terms of trial board	11
(f) Time and place of meetings	11, 12
(g) Semi-formality of trial proceedings; counsel for Institute and accused	12
(h) Agenda of proceedings; quorum; voting	12, 13, 14, 15
(i) Publication of official statement and trial board decision	15
(j) Confidential nature of proceedings	15
(k) Stenographic transcripts to new members on held-over cases	15

TRIAL BOARD MANUAL  
AND  
DISCIPLINARY PROCEDURES

1     Purpose

2                     This manual is prepared for the use of members of  
3     the trial board and sub-boards and the committee on profes-  
4     sional ethics in the hope that it may prove of value to  
5     members of these bodies, and particularly to those serving  
6     for the first time.

7     Background

8                     One of the hallmarks of a profession is a well-  
9     established and generally accepted code of ethics. When  
10    one applies for admission to the Institute, he agrees to  
11    abide by its Code of Professional Ethics and its by-laws.  
12    He must recognize that the Institute's rules may obligate  
13    him in areas larger in scope than those which may bind him  
14    under the rules of professional conduct of the state board  
15    of accountancy issuing his certificate or the state society  
16    of certified public accountants of which he is a member.  
17    Therefore the ethics committee may prefer charges against  
18    a member, even though he may not be subject to discipline  
19    at the state level.

20                    The broad objective of the ethics committee and  
21    the trial board and the sub-boards is to see that the code

22 of professional ethics is respected and observed to the end  
23 that the best interests of the public and the profession  
24 are served. Punishment for infractions is not an objective  
25 in itself. It is only one of the means of obtaining com-  
26 pliance.

27 In the American Institute the responsibility for  
28 disciplinary action falls on the committee on professional  
29 ethics,<sup>1/</sup> the secretary of the Institute,<sup>2/</sup> the executive  
30 committee,<sup>3/</sup> and the trial board and the sub-boards.<sup>4/</sup>

31 Generally speaking, the committee on professional  
32 ethics investigates alleged breaches of ethical standards.  
33 When the ethics committee finds a prima facie case of vio-  
34 lation of ethical standards, it reports the matter to the  
35 secretary of the Institute, who summons the member to trial,  
36 except that where it is established that the member's certi-  
37 ficate as a CPA has been suspended, revoked or withdrawn,  
38 the secretary of the Institute, in his discretion, may sub-  
39 mit the matter to the executive committee, which may  
40 terminate the membership of such member without referral  
41 to the trial board or a sub-board.

---

<sup>1/</sup> See Art. X, Sec. 3; Art. VI, Sec. 1 of the by-laws.

<sup>2/</sup> Art. VI, Sec. 1-3; Art. V, Sec. 4(f).

<sup>3/</sup> Art. VI, Sec. 1-3; Art. V, Sec. 4(f).

<sup>4/</sup> Art. V, Sec. 4-5; Art. VI, Sec. 2-4.

42                   In order to give a comprehensive picture of the  
43                   Institute's enforcement machinery, the work of all four  
44                   as they relate to disciplinary action, will be discussed.

45                   Committee on Professional Ethics

46                   The enforcement machinery of the Institute is set  
47                   in motion when a possible violation of ethical standards  
48                   comes to the attention of the committee on professional  
49                   ethics.<sup>5/</sup>

50                   Cases may come to the attention of this committee  
51                   in a number of ways. A formal complaint against a member  
52                   may be filed with the Institute.<sup>6/</sup> The matter may come  
53                   informally to the attention of a member of the committee  
54                   through his personal knowledge. The more serious cases  
55                   may appear in the press. In this connection the Institute  
56                   subscribes to a press-clipping service which may report the  
57                   names of members appearing in the press. When the staff  
58                   receives a clipping indicating a possible breach of pro-  
59                   fessional ethics, it is passed on to the committee on  
60                   professional ethics.<sup>7/</sup>

---

<sup>5/</sup> This committee is created by Art. IX, Sec. 1.  
Art. IX, Sec. 2(c) provides that the committee shall  
be elected by the Council and shall consist of not  
less than five members, not members of the executive  
committee. At present there are fifteen members of  
the committee.

<sup>6/</sup> Art. VI, Sec. 1.

<sup>7/</sup> Authorized under adoption by Council, May 13, 1940 of  
Report of Special Committee on Disciplinary Procedure.

61                   Broadly speaking, the ethics committee serves in  
62 several capacities: as an interpreter of the present pro-  
63 visions of the Code of Professional Ethics and as a proposer  
64 of new provisions or changes in existing provisions (numbered  
65 opinions, published statements); as a fact-finding body to  
66 ascertain whether there is a prima facie case of violation of  
67 the Code of Professional Ethics or a by-law, and, if so, as  
68 the prosecutor of such cases before the trial board.

69                   When a case is brought to the attention of the com-  
70 mittee on professional ethics, it is referred for investigation  
71 to a five-man subcommittee working in conjunction with the  
72 chairman of the committee. In cases where evidence indicates  
73 that the matter may call for trial board action, the sub-  
74 committee presents all the facts and its recommendations to  
75 the full committee. The committee may dismiss the complaint,  
76 take some informal action, or find a prima facie case of  
77 violation of a section of the Code of Professional Ethics  
78 or a by-law and report this to the secretary of the Institute.

79                   Thus the committee on professional ethics may find  
80 that no breach of professional ethics has occurred and may  
81 dismiss the complaint.<sup>8/</sup> If the complaint is dismissed by  
82 the committee or if the committee fails to act on it within  
83 ninety days, the member preferring the complaint may himself  
84 present it in writing to the trial board.

---

8/ Art. VI, Sec. 2.



85                    Similarly, the committee may find that although  
86 a minor breach of ethics has occurred, no worthwhile purpose  
87 would be served in holding the member for trial.

88                    An explanation as to how the violation occurred  
89 and a promise to abide by the rules in the future would be  
90 sought by the committee. Upon receiving such assurance, the  
91 committee may caution the member against repeating the offense.

92                    On the other hand, the committee may find that a  
93 prima facie case is established showing a serious violation  
94 of a by-law or a provision of the Code of Professional Ethics.  
95 A prima facie case is presented when there is sufficient  
96 evidence to overcome the general presumption of innocence  
97 and warrant a conviction. The evidence must be more than a  
98 mere rumor, suspicion, or distrust, and must be relevant to  
99 the issue, but need not be confined to the type which is  
100 legally admissible in a court of law. For example, the  
101 ethics committee may

- 102                    (a) submit a certified copy of a court  
103 record showing that the member of  
104 the Institute has been
- 105                    (1) declared by a court to have been  
106 guilty of committing fraud (Art. V,  
107 Sec. 4(b))
- 108                    (2) convicted of a felony or other crime  
109 or misdemeanor involving moral  
110 turpitude (Art. V, Sec. 5)
- 111                    (b) submit a letter from the secretary of  
112 a state board of accountancy of any  
113 state in which the member holds a  
114 certificate as a certified public

115 accountant stating that such state  
116 board has suspended, revoked or with-  
117 drawn such certificate (Art. V,  
118 Sec. 4(f))

119 While under the by-laws the trial board or a sub-  
120 board by a majority vote may admonish or suspend a member  
121 against whom a complaint is made for a period of not more  
122 than two years, there are offenses which require expulsion  
123 from the Institute and those which require either expulsion  
124 or suspension. The offenses which require expulsion are set  
125 out in Art. V, Sec. 5, as follows:

126 "A member or associate shall be expelled  
127 if the trial board or a sub-board thereof  
128 finds, by a majority vote of the members  
129 present and entitled to vote, that he has  
130 been convicted by a court of a felony or  
131 other crime or misdemeanor involving moral  
132 turpitude; provided, in the case of such a  
133 finding by a sub-board, its finding in this  
134 respect is not reversed by the trial board."

135 Counsel has advised that a "crime...involving moral turpitude"  
136 is one which offends the morals of mankind and is such that  
137 it would do so even in the absence of a statute making the  
138 offense a crime. For example, fraud is an offense involving  
139 moral turpitude. A member who is found by such a majority  
140 vote to have been convicted of such an offense must be  
141 expelled.<sup>9/</sup> A second category includes offenses for which  
142 a member may be either expelled or suspended.<sup>10/</sup> A member

---

<sup>9/</sup> Art. V, Sec. 5.

<sup>10/</sup> Art. V, Sec. 4(a) - (f).

- 143 renders himself liable to suspension or expulsion if:
- 144 (a) he refuses or neglects to give  
145 effect to any decision of the Insti-  
146 tute or of the Council, or
  - 147 (b) he infringes any of these by-laws or  
148 any of the provisions of the Code of  
149 Professional Ethics as approved by the  
150 Council of the Institute, or
  - 151 (c) he is declared by a court of competent  
152 jurisdiction to have committed any  
153 fraud, or
  - 154 (d) he is held by the trial board or a sub-  
155 board thereof to have been guilty of an  
156 act discreditable to the profession, or
  - 157 (e) he is declared by any competent court  
158 to be insane or otherwise incompetent, or
  - 159 (f) his certificate as a certified public  
160 accountant is suspended, revoked or with-  
161 drawn by the authority of any state,  
162 territory, or territorial possession of  
163 the United States or the District of  
164 Columbia. However, should the executive  
165 committee be of the opinion that it is  
166 in the best interest of the Institute, it  
167 may terminate without referral to the  
168 trial board or a sub-board appointed to  
169 hear the case, the membership of a member  
170 whose certificate has been so suspended,  
171 revoked, or withdrawn.

172 If a prima facie case is found, the ethics com-  
173 mittee reports the matter to the secretary of the Institute.  
174 The secretary of the Institute is required by the by-laws to  
175 summon the member or associate involved for a trial before a  
176 trial board or sub-board, except that in a case involving a  
177 suspension, revocation or withdrawal of a CPA certificate  
178 the secretary of the Institute may, in his discretion,

179 submit the matter to the executive committee. In such  
180 event, the executive committee may either terminate the  
181 membership or affiliation without referral to the trial  
182 board or sub-board or summon the member or associate to  
183 answer charges at a meeting of the trial board or a sub-  
184 board.<sup>11/</sup>

185 As a general rule the ethics committee invites a  
186 member whose case is to go to trial to confer with the com-  
187 mittee in advance of the trial. While the ethics committee  
188 is not required to call the accused before it to establish  
189 a prima facie case, he is usually given the opportunity to  
190 meet with at least one member of the ethics committee. At  
191 that time the accused member is advised that although the  
192 proceedings of the trial board or a sub-board are informal,  
193 he has the right to retain counsel to appear with him at  
194 the trial.

195 In all cases the committee on professional ethics  
196 works in close cooperation with the respective state  
197 societies and with the state boards of accountancy. Thus,  
198 if a case is being litigated in court or before a state  
199 board of accountancy, the committee follows the matter  
200 closely. It also seeks reports of the action taken by these  
201 other agencies and of the facts brought out by them.

---

<sup>11/</sup> Art. VI, Sec. 1.

202 The Secretary of the Institute

203           With one exception, the secretary of the Insti-  
204 tute serves only the ministerial function of summoning the  
205 accused member or associate to trial. The exception occurs  
206 when it is shown that a member's certificate is suspended,  
207 revoked or withdrawn by a state board. In such a case, the  
208 secretary of the Institute may, in his discretion, submit the  
209 matter to the executive committee, which has the power to  
210 terminate the membership of the respondent without referral  
211 to the trial board or a sub-board, or he may summon the member  
212 for trial before the trial board or a sub-board.<sup>12/</sup>

213 The Executive Committee

214           The only function of the executive committee in a  
215 disciplinary proceeding is in connection with a case referred  
216 to it by the secretary of the Institute which involves the  
217 suspension, revocation or withdrawal of the certificate of a  
218 member or affiliate by a state board. In such a case, the  
219 executive committee may terminate the membership of the  
220 member or affiliate without referral to the trial board or  
221 a sub-board if it appears to the committee that it is in  
222 the best interests of the Institute to do so.

223           In such a case, if the executive committee  
224 determines not to terminate such membership or affiliation

---

<sup>12/</sup> Art. VI, Sec. 1.

225 it is required to summon the respondent to appear and answer  
226 at a meeting of the trial board or sub-board.<sup>13/</sup>

227 The Trial Board and the Sub-Boards

228 The trial board of the Institute, in cases heard  
229 initially by it, fulfills the functions of judge and jury.  
230 Such cases may reach it either through the committee on profes-  
231 sional ethics or through a complaint of a member lodged  
232 directly with the trial board in the event the committee on  
233 professional ethics dismisses a complaint or fails to act  
234 within 90 days, as provided in Article VI, Section 2, of the  
235 by-laws. In either case the trial board must hear the facts,  
236 decide whether the accused is guilty, and render its judgment.

237 To expedite the handling of cases involving an  
238 alleged violation of the by-laws or the Code of Professional  
239 Ethics, and to achieve substantial economies of time and  
240 travel for all concerned, including members under charges,  
241 the chairman of the trial board, and in his absence, the vice  
242 chairman, is authorized to appoint from the members of the  
243 trial board a panel of not less than five members to sit as  
244 a sub-board to hear and adjudicate charges against members  
245 or associates.

246 The by-laws provide, in Article VI, Section 3(c),  
247 that the member or associate concerned, in a case decided

---

<sup>13/</sup> Art. VI, Sec. 1; Art. V, Sec. 4(f).

248 by a sub-board, may request a review by the trial board of  
249 the decision of the sub-board. They provide further that  
250 such a request for a review shall be considered by an ad  
251 hoc committee to be appointed by the chairman or vice chairman  
252 of the trial board. This committee is empowered to decide  
253 whether or not the request for a review by the full trial  
254 board shall be allowed. If the request for a review is  
255 allowed by the committee, the trial board then reviews the  
256 decision of the sub-board. It is contemplated that such a  
257 request for review will be allowed only in exceptional cases.

258 The 21-man trial board is elected by the Council  
259 from past and present members of the Council who are not  
260 members of the committee on professional ethics. The terms  
261 of the members of the trial board are arranged so that only  
262 seven members are elected each year. This provides  
263 continuity from year to year.<sup>14/</sup>

264 The secretary of the trial board, on instruction  
265 from the chairman, or vice chairman, of the trial board,  
266 issues the call for the meeting of the trial board or any  
267 sub-board which may have been appointed, and indicates the

---

<sup>14/</sup> Art. IX, Sec. 2(a). The trial board, acting upon nominations from the floor, elects from among its members a chairman and a vice chairman. They are elected for a term which expires no later than the expiration of their terms of office as members of the trial board. It also elects a secretary, who customarily serves at the pleasure of the board and who is usually a member of the staff of the Institute.

268 time and place of their meetings. Ordinarily, for the con-  
269 venience of most of the members of the trial board, its  
270 meetings as distinguished from those of the sub-boards, will be  
271 held at the same time and place as the annual meeting of the  
272 Institute.

273 Although trial board and sub-board proceedings  
274 are informal and legal rules with respect to admissibility  
275 of evidence do not apply, it is customary to have counsel  
276 for the Institute present and made available to both the  
277 committee on professional ethics and the trial board or any  
278 sub-board hearing the case. The accused may also be repre-  
279 sented by counsel; and, of course, the trial board and the  
280 sub-boards observe the fundamental rule that a member is  
281 presumed innocent until determined to be guilty.

282 The customary agenda of a trial board or sub-  
283 board proceeding is as follows:

- 284 (1) The chairman calls the meeting to  
285 order.
- 286 (2) The secretary notes the presence of  
287 the representative of the ethics  
288 committee, presenting the case for  
289 that committee, counsel for the  
290 Institute, and the stenographer.  
291 He calls the roll of the members of  
292 the trial board, or sub-board, as  
293 the case may be. The trial board's  
294 quorum is 11 and the sub-board's  
295 quorum is a majority of those ap-  
296 pointed to the sub-board.
- 297 (3) The chairman requests respondent and  
298 his counsel, if any, to appear before  
299 the trial board or sub-board.



- 340 (i) A motion is made by one of the  
341 members of the board or sub-board  
342 to find the respondent guilty or  
343 not guilty, as the case may be.
- 344 (ii) The motion is discussed.
- 345 (iii) A vote is then taken on the motion  
346 and the respondent is found either  
347 guilty or not guilty. This is done  
348 by a majority vote.
- 349 (iv) If found guilty, votes are taken to  
350 determine the disciplinary action.  
351 The following are the votes required  
352 for disciplinary action.
- 353 (a) a majority vote to admonish, or
- 354 (b) a majority vote to suspend for  
355 a period not more than two years,  
356 or
- 357 (c) a two-thirds vote to expel, or
- 358 (d) expulsion is mandatory under  
359 Article V, Section 5, of the  
360 by-laws, if the trial board or  
361 sub-board finds, by a majority  
362 vote of the members present and  
363 entitled to vote, that the  
364 respondent has been convicted by  
365 a court of a felony or other crime  
366 or misdemeanor involving moral  
367 turpitude.
- 368 (13) The trial board, or the sub-board, votes on  
369 whether the statement of the case to be pub-  
370 lished in The CPA shall disclose the name of  
371 the member involved. This is determined by  
372 majority vote.
- 373 (14) The next step is the procedure for prepara-  
374 tion of the statement of the case and  
375 decision of the trial board or sub-board.  
376 (The by-law provision is that a statement  
377 of the case and the decision of the trial  
378 board or sub-board hearing the case shall be  
379 prepared by a member or members of the trial  
380 board or the sub-board under a procedure to be

- 300 (4) Unless dispensed with by consent of  
301 the members present and the respondent  
302 or his counsel, if present, the chair-  
303 man reads the notice of the charge  
304 against the respondent, which has been  
305 sent to the members of the trial board  
306 or sub-board.
- 307 (5) The chairman explains that the proceed-  
308 ings are semi-formal and that formal  
309 rules of evidence do not apply.
- 310 (6) The chairman calls on the representative  
311 of the committee on professional ethics  
312 to present the charges and evidence in  
313 support thereof.
- 314 (7) On completion of presentation of the  
315 case by the representative of the com-  
316 mittee on professional ethics, the  
317 chairman inquires whether any members  
318 of the trial board or sub-board wish  
319 to question such representative. He  
320 also inquires whether the respondent  
321 or his counsel wishes to question such  
322 representative.
- 323 (8) The chairman then calls on the respondent  
324 or his counsel to answer the charges and  
325 submit any evidence in support of his  
326 answer.
- 327 (9) The members of the trial board may then  
328 question the respondent and his counsel.
- 329 (10) The chairman inquires whether the repre-  
330 sentative of the ethics committee plans  
331 to offer anything in rebuttal.
- 332 (11) On conclusion of the presentation of the  
333 case and the questioning, all, other than  
334 members of the trial board or sub-board,  
335 retire from the room.
- 336 (12) The trial board or sub-board then determines,  
337 in executive session, its disposition of  
338 the case. The procedure in this respect,  
339 is usually as follows:

381 established by such trial board or  
382 sub-board.)

383 (15) The representative of the ethics commit-  
384 tee, the respondent and his counsel, the  
385 Institute's counsel, the secretary, and  
386 the stenographer are called and notified  
387 of the board's decision.

388 Miscellaneous Remarks

389 1. All matters coming before the trial board or  
390 sub-board are considered confidential. However, neither  
391 their confidential nature nor a decision of the trial board  
392 or sub-board not to publish a member's name in the  
393 "Statement of the Case," to be published in The CPA, shall be  
394 construed to prevent the disclosure of any information to  
395 anyone having a legitimate interest in the matter.

396 2. Should a trial be held over for a later meeting  
397 of the trial board, the secretary, well in advance of the  
398 session, provides new members of the board who were not  
399 present at the original trial with copies of the steno-  
400 graphic transcript and exhibits that were presented.