

CFE CODE OF PROFESSIONAL STANDARDS INTERPRETATION AND GUIDANCE

The purpose of this Interpretation and Guidance document (the “Guidance”) is to provide clarification about the CFE Code of Professional Standards (the “Standards”) for Certified Fraud Examiners (“CFEs”). Each section of the Standards has been reprinted below in italics, followed by text which is intended to help explain how the Standard should be interpreted. Readers should be mindful that no explanation can cover every situation or circumstance, and therefore the guidance contained herein is intended to show how the Standards *generally* should be interpreted. Ultimately, it is the CFE’s responsibility to act in accordance with the Standards, taking into account the specific facts and circumstances of their particular case.

The Guidance does not constitute rules of conduct for CFEs, nor is it intended to create obligations or duties for CFEs beyond those contained in the Standards. Failure of a Certified Fraud Examiner to adhere to the interpretive text contained in this document shall not by itself be deemed a violation of the Standards. Rather, the Guidance is meant to help clarify the meaning of the Standards and assist CFEs in resolving questions of how the Standards may be applied to particular situations.

Questions, comments or suggestions about the Standards or this Guidance should be directed to:

The Association of Certified Fraud Examiners

Attn: General Counsel’s Office

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Section I. Preamble

The Association of Certified Fraud Examiners is an association of professionals committed to performing at the highest level of ethical conduct. Members of the Association pledge themselves to act with integrity and to perform their work in a professional manner.

Members have a professional responsibility to their clients, the public interest and each other, a responsibility that requires subordinating self-interest to the interests of those served.

These Standards express basic principles of ethical behavior to guide Members in the fulfilling of their duties and obligations. By following these Standards, all Certified Fraud Examiners shall be expected, and all Associate Members shall strive, to demonstrate their commitment to excellence in service and professional conduct.

Guidance

This Preamble introduces the Standards for CFEs and it serves three functions. First, it describes the commitment CFEs make to integrity and professionalism. Second, it describes the ACFE’s view of a CFE’s responsibilities to clients, each other and society. And third, it explains the rationale behind, and the scope of, the Standards.

Section II. Applicability of Code

The CFE Code of Professional Standards shall apply to all certified Members of the Association of Certified Fraud Examiners (ACFE). Associate Members of the ACFE should strive to adhere to the Standards, but are not bound by them. The use of the terms “Certified Fraud Examiner” and “CFE” in this Code shall refer to certified Members. For purposes of these Standards, the term “fraud examination” means an assignment or engagement, a substantial purpose of which involves the prevention, detection, investigation, or resolution of fraud or fraud-related conduct.

Guidance

All CFEs, as a condition of their certifications and membership, are required to adhere to the Standards. Associate Members of ACFE are not required to follow the Standards, but they are encouraged to do so, as the Standards represent sound principles of conduct for anti-fraud professionals.

Although CFEs are required to follow the Standards when possible, there might be instances where a CFE encounters a conflict between the Standards and certain laws, regulations or court orders to which they are subject. In the event that such a conflict arises, the provisions of the law, regulation or court order should be followed.

In other cases, a CFE might encounter standards or like requirements that are imposed by other professions, industries or employers, and which cover topics that are also covered by the Standards. For example, a CFE who is also a public accountant will likely have confidentiality obligations arising not only from the Standards, but also from the professional rules for CPAs or Chartered Accountants in their jurisdiction. In this situation, the best practice is generally for the CFE to follow the more stringent of the two requirements.

For purposes of these Standards, the term “fraud examination” is defined to mean any engagement or assignment, a substantial purpose of which involves the prevention, detection, investigation or resolution of fraud or fraud-related conduct. Questions of whether a particular engagement or assignment constitutes a fraud examination will be determined on a case by case basis. Examples of assignments or engagements that would be considered fraud examinations include but are not limited to the following:

- A CFE is hired by a client to investigate allegations of fraud or fraud-related conduct;
- A CFE is engaged by a client to provide professional services. During the engagement, evidence of fraud is detected and the CFE is either directed by the client, required by rule or chooses on their own to follow up on such evidence;
- A CFE is directed by their employer to conduct an internal audit based on allegations of fraud by an employee or vendor;
- A CFE is engaged by a client to conduct a fraud risk assessment or evaluation of anti-fraud controls;
- A CFE is engaged to serve as an expert in a litigation case in which questions of fraud or fraud-related conduct are at issue.

Examples of assignments or engagements that would not be considered fraud examinations include but are not limited to the following:

- A CFE who is a CPA is engaged by a client to conduct a general audit of the company's financial statements, where no allegations of fraud have been made and no evidence of fraud is uncovered;
- A CFE who is an internal auditor is directed by their employer to conduct a routine audit where no allegations of fraud are known to them;
- A CFE is engaged to serve as an expert in a litigation case where no questions of fraud or illegal conduct are at issue.

Section III. Standards of Professional Conduct

A. Integrity and Objectivity

1. *Certified Fraud Examiners shall conduct themselves with integrity, knowing that public trust is founded on integrity. CFEs shall not sacrifice integrity to serve the client, their employer or the public interest.*

Guidance

The concept that CFEs should conduct themselves with *integrity* means that CFEs should behave honestly and straightforwardly toward their clients/employers. They should deal fairly with clients/employers and should not knowingly provide clients/employers with information that is materially false or misleading. CFEs should be mindful that the integrity they exhibit reflects not only on them, but also on the ACFE and the anti-fraud profession in general. If a CFE fails to act with integrity, then public confidence in that CFE and in the ACFE itself might be diminished.

The requirement to act with integrity applies both to the conduct of the fraud examination and to the underlying engagement between the CFE and their client/employer. For instance, a CFE would be found to exhibit a lack of integrity if they deliver a fraud examination report that they know contains materially false or misleading statements, contains information that was furnished recklessly without regard for its accuracy or omits material information that causes the report to be misleading. Similarly, if a CFE were to knowingly overbill a client or falsify expenses in connection with an assignment, this would also show a lack of integrity.

This Standard does not prohibit CFEs from engaging in generally accepted investigative techniques that might involve untruthfulness directed toward suspects or investigation targets. For instance, CFEs in law enforcement who are on undercover assignments may be required to be untruthful about their conduct, their status as law enforcement officers, etc. Absent exceptional circumstances, this type of conduct would not violate the Standard requiring that CFEs act with integrity.

2. *Prior to accepting the fraud examination, Certified Fraud Examiners shall investigate for actual, potential, and perceived conflicts of interest. CFEs shall disclose any such conflicts of interest to potentially affected clients or to their employers.*

Guidance

An actual *conflict of interest* exists when a Member's ability to act objectively, or in the best interests of the client and/or employer, is impaired by any current, prior, or anticipated relationship with parties relevant to the fraud examination. Similarly, a potential conflict of interest exists when the Member's objectivity is reasonably likely to be impaired due to a potential event or situation. For example, a conflict of interest might exist if a Member is asked to conduct a fraud examination of someone with whom they have strong personal or business ties, such as a relative, a friend, a business partner, an entity the Member has a financial interest in, or—in the case of a potential conflict—someone with whom the Member reasonably foresees having a strong personal or business relationship. A perceived conflict of interest exists when a situation would cause a neutral and informed third party to reasonably conclude that a CFE's ability to conduct a fraud examination in an objective manner could be hindered.

The wording in the Standards that CFEs “*shall* disclose any actual, potential, and perceived conflicts of interest” makes it clear that a CFE may not proceed with an engagement before each affected client and/or employer has been notified of the conflict. However, the rule does not necessarily bar CFEs from accepting engagements where an actual, potential, or perceived conflict of interest exists. Instead, the rule only requires that such a conflict be disclosed. After disclosure, it is the client and/or employer's decision as to whether the CFE may continue the engagement.

As a matter of best practice, a CFE should disclose any actual, potential, or perceived conflicts to their client and/or employer in writing. And if, after disclosure, the client and/or employer consents to allow the CFE to continue the engagement, the consent should be in writing as well. Thus, a record of both the disclosure and the written consent should be maintained in case the CFE's objectivity is later called into question.

Although the Standard only specifies that CFEs shall investigate for actual, potential, or perceived conflicts “prior to accepting the fraud examination...” CFEs should be mindful of the potential for conflicts throughout the engagement, and if such a conflict arises in the midst of an examination that was not known at the outset, it is best practice for the CFE to disclose that conflict immediately and suspend work until written consent has been obtained from the client and/or employer. Otherwise, the CFE's work product might be vulnerable to claims that the CFE lacked objectivity.

The following are examples of how CFEs could conduct an engagement where there is a potential or perceived conflict of interest if it is properly disclosed.

Example

A CFE is approached by a company to investigate a possible corruption scheme, and she checks for conflicts prior to accepting the engagement. She discovers that she briefly worked at another organization with someone in the company's purchasing department, but they had little interaction. The CFE discloses the potential conflict to Company A, whose leadership decides that they are not concerned that the conflict will affect the CFE's judgment. The CFE prepares a written disclosure that identifies the conflict, states that Company A acknowledges the situation and consents to the engagement, and is signed by an authorized representative of Company A.

Example

A company requests a CFE to investigate certain transactions with a local vendor that the company uses. The CFE has a close family member who has seriously considered applying to the local vendor for employment but has not yet done so. Even though there may not be a current conflict of interest, the CFE should disclose the potential for a conflict to the company.

Example

A CFE is approached by Company A to provide a fraud examination in relation to a business agreement between Company A and Company B. Two years earlier, the CFE performed consulting services for Company B in an unrelated matter. The CFE must disclose and obtain signed consent from both Company A and Company B.

Example

A university approaches a CFE's private firm to conduct a fraud examination in a case that could potentially involve liability on the part of the university. The CFE has an extended family member who is about to graduate from the university. The CFE does not believe there is an actual conflict of interest, because the family member had already received final grades and been officially notified of graduation eligibility before the CFE was approached about the engagement. However, the CFE determines that there could be a perceived conflict of interest, and therefore must disclose the situation to the potential client prior to accepting the engagement.

3. *Certified Fraud Examiners shall maintain objectivity in discharging their professional responsibilities within the scope of the fraud examination.*

Guidance

Objectivity refers to the ability to conduct fraud examinations without being influenced by one's own personal feelings or the personal feelings and motives of others. An objective CFE provides professional services or recommendations in an impartial manner and is not influenced by bias, prejudice, or other information that cannot be substantiated or that has no foundation. *Bias* refers to partiality that prevents an individual from objectively considering an issue or situation, whereas *prejudice* refers to a preconceived attitude, belief, or feeling that prevents objective consideration of an issue or situation.

A CFE would likely be found to have violated this Standard, for example, if they were to determine at the outset of an examination that Suspect A had misappropriated funds, and then proceeded to only gather or seek out evidence showing that Suspect A was responsible for the missing money, while ignoring evidence that tended to show Suspect A was not responsible.

This Standard is closely related to Section III.A.2., which requires CFEs to disclose actual, potential, and perceived conflicts of interest, but it is broader in some respects. While CFEs are only required to disclose conflicts of interest, which may be waived by the client/employer, there is no waiver option for this Standard. A CFE who fails to maintain objectivity is in violation of the Standards regardless of whether the client/employer consents to the CFE's conduct. Therefore, a CFE should remove themselves from an engagement if their objectivity has become so diminished that it could significantly impact the outcome or findings of the examination.

Another issue that CFEs should consider when accepting a fraud examination engagement is whether a proposed contingency fee (i.e., an arrangement where the amount of the fee for services is dependent on the outcome of the case) will compromise the CFE's objectivity or give rise to an actual or perceived conflict of interest. Generally, contingency fees can expose CFEs to allegations of bias, because CFEs are expected to be objective and to avoid the appearance of a conflict of interest. However, there may be situations in which a contingency fee is customary, reasonably unlikely to result in bias, and/or is required by law for certain services performed by CFEs. For instance, contingency fees would be acceptable under the ACFE Code of Professional Standards in the following hypothetical situations:

- Royalty auditors are customarily paid a contingency fee based on recovery of royalties that were not properly distributed (regardless of whether the royalties were improperly held due to fraud or otherwise).
- As required by the relevant jurisdiction's law, a health care claims recovery auditor is paid contingency fees based on recovered overpayments (whether the overpayments made were due to fraud, breach of contract, or otherwise).

Another consideration for CFEs who are members of or licensed by other professional organizations is that there might be conflicting rules on contingency fees, in which case the CFE should follow the more stringent of the rules (see Section II of the Guidance). Therefore, contingency fees should be approached with caution, but there are some circumstances where such fees may be acceptable if they are reasonable and unlikely to impact the objectivity of the CFE.

4. *Certified Fraud Examiners shall not commit acts discreditable to the ACFE or its membership, and shall always conduct themselves in the best interests of the reputation of the profession.*

Guidance

CFEs who commit discreditable acts tarnish their reputation, the reputation of the ACFE, and the public perception of the CFE designation. A *discreditable act* is an act that damages

a CFE's integrity, trustworthiness, or fitness to practice as an anti-fraud professional. Examples of discreditable acts include, but are not limited to:

- Being convicted of an offense punishable by more than one year in prison (a felony) or a crime of moral turpitude.¹
- Being adjudicated for an offense of dishonesty, fraud or gross negligence in a professional engagement
- Breaching a fiduciary responsibility in a professional engagement
- Failing to comply with a valid court order
- Giving intentional false sworn testimony
- Fabricating evidence or knowingly excluding relevant evidence in a professional engagement
- Making threats of bodily harm in connection with a professional engagement
- Failing to turn over to a client/employer records that were (a) provided by the client/employer; or (b) prepared by the CFE for a client/employer (provided that the preparation of such records is complete and no fees for the engagement are due.)
 - Failure to turn over work papers does not constitute an act discreditable unless the CFE is required by law or regulation to turn over such work papers.
- Soliciting or disclosing CFE Exam questions and answers, or performing other acts of fraud or deceit in obtaining a CFE certification

5. *Certified Fraud Examiners shall not knowingly make a false statement when testifying under oath in a court of law or other dispute resolution forum. CFEs shall comply with lawful orders of the courts or other dispute resolution bodies. CFEs shall not commit criminal acts or knowingly induce others to do so.*

Guidance

CFEs commonly provide sworn testimony in courts of law or other dispute resolution forums. When doing so they are prohibited from knowingly making a false statement. The use of false statements by a CFE in such circumstances could cause the innocent to be punished or the guilty to go free, or could result in unjust civil or administrative rulings. In short, a CFE's testimony can hold great weight in a legal proceeding, and this power to influence should not be taken lightly. False statements, if uncovered, only serve to undermine the CFE's credibility with the trier of fact and could subject the CFE to legal liability.

Similarly, CFEs are obligated to comply with lawful orders of the courts. Failure to do so shows a disregard for the authority of the court, could negatively impact the outcome of a case, and might constitute a criminal or civil violation for which the CFE can be held liable.

¹ Section 5.07 of the ACFE Bylaws defines a *crime of moral turpitude* as "one that calls into question the integrity and judgment of the offender and includes but is not limited to offenses such as bribery; fraud; corruption; solicitation; embezzlement; theft by a fiduciary or trustee; or theft by trick, deceit or false pretenses."

Additionally, this Standard provides that Members should not commit criminal acts or knowingly induce others to do so. Generally speaking, this Standard is meant to apply to offenses punishable by more than one year in prison or crimes of moral turpitude.² However, other crimes might constitute a violation of this Standard depending on their severity and the circumstances of the case. For example, reckless or intentional misconduct that endangers the life or safety of another, even if it is not punishable by more than one year in prison, might constitute a violation. Minor infractions that do not involve any aspect of moral turpitude and have no relevance to the CFE's professional conduct, such as traffic violations, would not ordinarily be deemed violations of this Standard, although Members should strive to obey all laws at all times.

All cases involving the application of this Standard are decided by the ACFE Board of Regents at its own discretion on a case-by-case basis.

B. Professional Competence

1. *Certified Fraud Examiners shall be competent and shall not accept assignments where competence is lacking. In some circumstances, it may be possible to meet the requirement for professional competence by use of consultation or referral.*

Guidance

Professional competence refers to an individual's knowledge, skills, experience and overall capability to perform the duties of a CFE in a particular engagement. Each CFE is responsible for ensuring that they have the requisite competence to perform the services required of them in an adequate and capable manner. This is a determination that is to be made on a case-by-case basis. If a CFE determines that they cannot reasonably expect to complete the engagement with professional competence, then they should not accept the assignment.

The competence required in any given engagement will depend on a number of factors, including the complexity of the case, the specialized nature of the assignment, the CFE's experience and training in the matter at issue and whether the CFE has the ability to consult with or refer the matter to third parties of established competence.

This Standard specifically provides that CFEs may meet the professional competence requirement by consultation or referral with other professionals who possess knowledge, skills or experience that the CFE might lack. For example, suppose a CFE takes on a fraud examination case, and part of the investigation will require data to be recovered from a suspect's computer hard drive. Suppose further that the CFE has no training or experience in recovering data from a hard drive. This would not preclude the CFE from accepting the engagement, provided that they consult with or retain someone with the requisite skills

² Section 5.07 of the ACFE Bylaws defines a *crime of moral turpitude* as "one that calls into question the integrity and judgment of the offender and includes but is not limited to offenses such as bribery; fraud; corruption; solicitation; embezzlement; theft by a fiduciary or trustee; or theft by trick, deceit or false pretenses."

necessary to recover the data in a professionally competent manner. Conversely, if the CFE determines to extract the data themselves without any training or consultation, and without understanding fully how to perform that task, then the CFE would likely be found to lack professional competence to handle the engagement.

Competency is not the same thing as perfection. The fact that a CFE might make errors of judgment in an engagement, or even the fact that a CFE might perform an engagement below the level of the client's expectations, does not necessarily mean that the CFE lacked competence. The question of whether a CFE had adequate professional competence to accept an engagement is one that should be focused on the CFE's good-faith assessment of their knowledge, skills and experience at the time the engagement was accepted, not after it has been completed.

2. *Certified Fraud Examiners shall maintain the minimum program of continuing professional education required by the Association of Certified Fraud Examiners. A commitment to professionalism combining education and experience shall continue throughout the CFE's professional career. CFEs shall continually strive to increase the competence and effectiveness of their professional services.*

Guidance

CFEs shall continually strive to increase the level of competence and effectiveness of their professional services by maintaining appropriate continuing professional education (CPE). CPE requirements are set by the ACFE Board of Regents and are subject to change. These requirements are published by ACFE on its website at ACFE.com/CPE. It is the CFE's responsibility to know what CPE requirements have been established by the Board of Regents. Members must maintain the minimum levels of CPE as dictated by the Board and must certify their compliance with CPE requirements in accordance with the Board's rules.

C. Due Professional Care

1. *Certified Fraud Examiners shall exercise due professional care in the performance of their fraud examination services. Due professional care requires diligence, critical analysis and professional skepticism in discharging professional responsibilities.*

Guidance

The requirement that a CFE exercise *due professional care* means that the CFE should perform their services to the best of their ability with consideration for the best interests of the client/employer. A CFE should be diligent in their work and should exercise critical analysis and professional skepticism of at least the level that a client/employer ought to reasonably expect from a competent professional in the CFE's field.

The fact that a CFE makes errors in an engagement or fails to meet the client/employer's expectations does not necessarily mean that they failed to exercise due professional care. In evaluating whether a CFE has exercised due professional care, two primary questions should be addressed: (1) Did the CFE make a good faith effort to perform services to the best of their ability, with the client/employer's best interests in mind? (2) Did the CFE

perform their services and exercise critical analysis and professional skepticism no less diligently than what would be expected of a competent professional in the CFE's field? If the answer to both of those questions is yes, then the CFE has likely exercised due professional care, even if errors were made.

2. *Conclusions shall be supported with evidence that is relevant, reliable and sufficient.*

Guidance

CFEs are permitted to draw reasonable conclusions in fraud examination reports and, of course, when offering expert testimony. In fact, the CFE's specialized knowledge, skills and expertise might make them particularly qualified to assist a layperson — whether it is a client/employer or a jury — in drawing conclusions from the evidence at hand.

CFEs must use relevant, reliable and sufficient evidence to support their findings and conclusions. *Evidence* can be defined as all the information that influences a decision-maker in reaching decisions. *Black's Law Dictionary* defines *evidence* as:

Anything perceivable by the five senses, and any proof such as testimony of witnesses, records, documents, facts, data, or tangible objects legally presented at trial to prove a contention and induce a belief in the minds of a jury.

Relevant evidence is evidence that tends to make some fact at issue more or less likely than it would be without the evidence. Evidence that has no relationship to any of the issues in the case is irrelevant.

Evidence is *reliable* if it comes from a trustworthy or believable source. Evidence is *sufficient* to support a CFE's findings and conclusions where the weight of the evidence is such that a reasonable professional could draw the same or a similar conclusion to that of the Member. The fact that two professionals might draw different conclusions based on the same evidence does not necessarily mean that one of the experts has acted on insufficient evidence. For example, at trial it is common for expert witnesses to offer opposing and contradictory conclusions based on the facts at issue. The test of sufficiency is not a test of which expert witness is "right" and which is "wrong." Instead, the question is whether a similarly situated professional *could reasonably* draw the same or a similar conclusion as the witness, given the evidence at hand.

Although CFEs are generally permitted to make conclusions based on appropriate evidence, they should be mindful that Article Five of the ACFE Code of Professional Ethics specifically prohibits CFEs from expressing opinions "regarding the guilt or innocence of any person or party." For guidance on this prohibition, refer to Section V.B.2 of this document.

3. *Fraud examinations shall be adequately planned. Planning controls the performance of a fraud examination from inception through completion and involves developing strategies and objectives for performing the services.*

Guidance

Preparation is a critical step in any fraud examination. Planning for a fraud examination involves understanding the goals of the engagement and developing a strategy for its expected conduct, organization and staffing.

The extent of planning required and the nature of the planning process will vary depending on the type of examination to be conducted. It is the CFE's responsibility to ensure that they have adequately planned for each engagement, taking into account the specifics of the case at hand. Generally, larger, more complex examinations will require more detailed planning than smaller, simpler ones. The CFE's familiarity with the client/employer or the facts and circumstances of the case will also impact the amount of planning that is required.

The following questions might help the CFE understand the key issues to be addressed and develop a plan for performing an examination:

- What is the scope of the fraud examination?
- What is the budget?
- Are there adequate resources to conduct this examination?
- What is the line of authority?
- To whom should information be reported?
- What type of report, written or oral, does the client/employer expect? Will law enforcement assistance be necessary?
- What is the nature of the matter(s) at issue?
- Who are the relevant parties?
- What period is under review?
- What are the deadlines?
- Where are the information, documents and data pertinent to the examination located?
- Have any related fraud examinations ever been conducted at the relevant location?
- What other sites, entities, departments or regions might be involved?
- How long has the issue existed?
- If fraud is suspected, did it occur in an industry or location that has a history or culture of fraud?
- Has the organization been in compliance with reporting and regulatory requirements?
- Does the organization have a fraud policy?

The fact that a fraud examination might deviate in course from the CFE's initial plan does not necessarily indicate that the CFE failed to adequately plan the engagement. Fraud examinations, by their nature, are fluid. As new evidence emerges, the CFE might identify new targets and find it necessary to amend their fraud hypothesis and expand the scope of the engagement. Additionally, as the examination progresses the client/employer might make changes to the goals, resources, budgets or timelines of the examination. All of these factors can impact the planning of the engagement. Where changes occur that materially affect the conduct of the examination, the CFE should review their plan and make

adjustments as necessary to account for the new information or new client/employer direction.

4. *Work performed by assistants and other professionals operating under the Certified Fraud Examiner's direction on a fraud examination shall be adequately supervised. The extent of supervision required varies depending on the complexities of the work and the qualifications of the assistants or professionals.*

Guidance

In some circumstances the CFE may use other professionals to assist them in a professional engagement. These might include assistants, other CFEs or anti-fraud professionals or third-party professionals with specialized skills. Regardless of who the CFE retains to assist them, the CFE is still ultimately responsible for providing competent services to the client/employer. Therefore, it is the CFE's responsibility to adequately supervise those who are working under their direction to make sure that competent services are being delivered with due professional care. This Standard does not require a CFE to supervise individuals who are not working under their direct authority.

D. Understanding with Client or Employer

1. *At the beginning of a fraud examination, Certified Fraud Examiners shall reach an understanding with those retaining them (client or employer) about the scope and limitations of the fraud examination and the responsibilities of all parties involved.*

Guidance

At the outset of a fraud examination, the CFE should communicate with their client/employer to ensure that there is mutual understanding regarding the scope, expectations, subject matter, compensation, deliverables and other key issues concerning the examination. This Standard is designed to help preclude disagreements or confusion as to the nature, or the expected outcome, of an engagement.

Issues to be addressed in reaching an understanding about the scope and limitations of the fraud examination will vary, but might include the following:

- The matter to be investigated
- Timeliness or urgency of the engagement
- Compensation
- Requirements for status updates and ongoing communication
- Guidelines for the final report
- The format for the final report
- Confidentiality requirements
- Expertise or resources (e.g., equipment, software, etc.) required
- Supporting assistance, if any, needed from the client/employer
- Specific responsibilities of the Member, client/employer and other parties involved in the engagement
- Scope of documents, witnesses and/or physical areas accessible to the CFE

As a matter of best practice it is suggested that CFEs document the understanding in a formal written contract or a client engagement letter. However, oral agreements are not prohibited by this Standard. Furthermore, it is recognized that in some circumstances it might not be practical to have a written understanding of the engagement. For example, CFEs who work in-house might not have any sort of formal agreement or engagement letter with their employer concerning their assignments. Nevertheless, when a CFE conducts a fraud examination based on an oral agreement or oral instructions from an employer, it is a good idea for the CFE document their understanding of the agreement or assignment and make reasonable efforts to communicate their understanding of the engagement to the client/employer.

2. *Whenever the scope or limitations of a fraud examination or the responsibilities of the parties change significantly, a new understanding shall be reached with the client or employer.*

Guidance

Standard III.D.1, discussed above, requires CFEs to reach an understanding with the client/employer at the outset of the engagement about the scope and limitations of the fraud examination and the parties involved, but the full scope of a fraud examination might not be entirely foreseeable at the beginning of the engagement. During the examination, new evidence might emerge or new facts might be uncovered that shift the scope or alter the responsibilities of those conducting the examination. For example, a CFE might find that the fraud being investigated is significantly larger than was originally anticipated and additional resources will be required to identify and recover all missing funds. Alternatively, the CFE might discover that the examination will require them to retain professionals with specialized skills who were not originally included in the plan of examination.

When new issues significantly change the scope or limitations of a fraud examination or the responsibilities of the parties, the CFE is required to reach a new understanding with the client/employer. This rule reflects the fact that the CFE provides services for the benefit of the client/employer. If the nature of those services or the expectations about the engagement significantly change, then the client/employer must be notified and must consent to the changes. For example, if the changes are likely to involve significantly increased costs, it would be unfair and could lead to a subsequent dispute if the CFE were to proceed without the client's consent.

This Standard only requires a new understanding for *significant* changes in scope, limitations or responsibilities. Generally speaking, changes likely to cause materially higher costs or materially longer engagements would be considered significant. Changes affecting other aspects of the examination — such as the suspects, the theories of wrongdoing, the makeup of the examination team, the investigative techniques to be employed or other factors — might or might not be deemed significant depending on the circumstances of the case. The key question is whether the changes are likely to be deemed material by the client.

Finally, this Standard does not require that the modified understanding with the client be in writing, or even that it be in the same format as the original understanding. However, as a matter of best practice it is advisable for CFEs to note in writing any significant changes to the scope of the engagement and to obtain the client/employer's written consent to those changes where possible. Where the CFE only receives oral consent from the client/employer, it is advisable for them to make a written record that the client/employer was notified of the changes, to note that the client/employer consented to the changes, and to note the CFE's understanding of any changes to the engagement.

E. Communication with Client or Employer

1. *Certified Fraud Examiners shall communicate to those who retained them (client or employer) significant findings made during the normal course of the fraud examination.*

Guidance

Proper communication with the client/employer is essential to the success of fraud examinations. Communication will help ensure that the CFE keeps the client/employer informed about the progress of the engagement and it will provide assurance to the client/employer that the CFE is performing their professional duties with competence and due care. CFEs should be mindful that they perform fraud examination services for the benefit of the client/employer, and therefore CFEs have a responsibility to keep the client/employer reasonably informed.

This Standard only requires the CFE to communicate *significant* findings from the fraud examination. The question of what is significant will depend on the facts of the engagement, and the CFE should use their best judgment to determine if a finding would be significant to the client/employer. A CFE will not be deemed to have violated this Standard for failing to convey insignificant or irrelevant findings made during the normal course of the fraud examination.

While this Standard only requires the CFE to communicate significant findings, Members should still promptly comply with reasonable requests from client/employers for information about an examination, even if the CFE does not consider the information requested to be significant. For one thing, the fact that the client requests information indicates that the client might believe it is significant. Furthermore, under the duty of Integrity (see Section III.A), the CFE is expected to deal honestly and straightforwardly with client/employers, and under the Standard of Due Professional Care (see Section III.C) the CFE is expected to perform services diligently and with consideration for the best interests of the client/employer.

F. Confidentiality

1. *Certified Fraud Examiners shall not disclose confidential or privileged information obtained during the course of a fraud examination without the express permission of a proper authority (such as the client or where required by statute or regulation) or the lawful order of a court. This requirement does not preclude professional practice or*

investigative body reviews as long as the reviewing organization agrees to abide by the confidentiality restrictions.

Guidance

In general, *confidential* information includes any information:

1. that is held by or concerns the client/employer, whether technical, business, financial or otherwise
2. that the client/employer discloses to the CFE or that the CFE obtains in the course of a professional engagement and
3. that the client/employer treats as confidential or secret, or which the client/employer does not make publicly available

Privileged information means information obtained within the context of a legally protected relationship that the law protects from forced disclosure. In the context of a fraud examination, the most likely privileges to exist are the legal professional privileges that protect communications between professional legal advisors (e.g., solicitors, barristers, attorneys, etc.), their clients and, in some situations, third-party consultants hired to help provide legal advice to clients. The requirements for the application of these privileges vary among jurisdictions, but generally, if a CFE is retained by and working under the direction of an attorney, then certain communications made between the CFE and the client/employer or the attorney might be deemed privileged.

Due to the nature of fraud examinations, CFEs often will come into contact with confidential or privileged information of the client/employer. This Standard provides that CFEs may not disclose such information without “the express permission of a proper authority or the lawful order of a court.” Obviously, the most common “appropriate authority” is the client/employer itself, who owns the confidential or privileged information. A CFE should generally not disclose a client/employer’s confidential or privileged information without the client/employer’s consent or else they will have breached that client/employer’s trust and would likely be found to have violated this Standard.

There are, however, certain exceptions. The Standard specifically permits CFEs to turn over confidential or privileged information when compelled by a lawful court order to do so. In some circumstances the CFE may also be permitted to turn over confidential or privileged information if authorized by the law of that CFE’s jurisdiction — for example, if the CFE becomes aware of an ongoing fraud and is obligated by statute to report the crime. Similarly, if the CFE is ordered to turn over confidential or privileged information by a legislative or regulatory body, an investigative review board or another entity with the proper legal authority to compel the production, then the CFE is permitted to disclose the information.

When presented with a lawful order directing them to turn over the client/employer’s confidential or privileged information, a CFE must alert the client/employer unless directed otherwise by the body issuing the order. If the CFE is notified that the client/employer will make a legal challenge to the compelled production, then the CFE may delay in producing

the information until the challenge has been settled, provided that the CFE's delay does not violate the order.

CFEs should evaluate whether the identity of a whistleblower is considered confidential information. Statutes, regulations, or organizational policies may define a whistleblower and might provide protections to that person, including protection from disclosure of their identity. Whether this information must remain confidential will be based on the circumstances, the best interest of the client, the relevant law, and organizational policies, all of which the CFE should take into account. In addition to being a potential violation of Section III. F., improper disclosure of a whistleblower's identity risks retaliation against the whistleblower and can result in claims against the CFE and the CFE's client or employer.

Section IV. Standards of Examination

A. Fraud Examinations

- 1. Fraud examinations shall be conducted in a legal, professional and thorough manner. The Certified Fraud Examiner's objective shall be to obtain evidence and information that is complete, reliable and relevant.*

Guidance

This Standard addresses the general duty CFEs owe to their client/employers to operate within the bounds of the law of their jurisdictions, to exhibit high standards of professionalism and to be thorough in the performance of their duties.

The requirement that a CFE should act in a legal manner is similar to Standard III.A.5, which states that CFEs "shall not commit criminal acts or knowingly induce other to do so." The obligation to act legally under this Standard not only reinforces the rule that CFEs shall not commit criminal acts, but it serves to bar other types of illegal behavior as well. For example, suppose a CFE were to intentionally violate a suspect's privacy or knowingly publish defamatory facts about a suspect or a client/employer. In many jurisdictions these would be considered civil, not criminal violations. While this type of tortious conduct is not covered by the prohibition against criminal acts in Standard III.A.5, it would constitute a violation of this Standard because the conduct would still be deemed illegal. Negligent conduct is not generally deemed to constitute illegal conduct under this Standard; the CFE must have acted intentionally, knowingly, recklessly or with gross negligence.

The requirement for CFEs to conduct fraud examinations in a professional manner is essentially a reiteration of Section III.C.1, which requires CFEs to exercise due professional care in the performance of their services. The CFE should diligently perform the fraud examination to the best of their ability, with consideration for the best interests of the client/employer and with at least the degree of professionalism that a client/employer should reasonably expect from professional in the CFE's field.

The requirement that CFEs must conduct fraud examinations in a thorough manner is explained, in part, by the second sentence of the Standard, which states that the CFE's objective should be to obtain evidence that is reliable, relevant and complete.

Evidence is *reliable* if it comes from a trustworthy or believable source. *Relevant evidence* is evidence that tends to make some fact at issue more or less likely than it would be without the evidence. Evidence that has no relationship to any of the issues in the case is irrelevant and should not be used or relied upon.

The idea of seeking out evidence and information that is *complete* means the CFE should make a reasonable effort to gather sufficient evidence or information to complete the engagement or assignment. The CFE must use their judgment and the direction of the client/employer to determine whether the evidence they have gathered is complete and the assignment has been fulfilled, taking into account all aspects of the engagement, including resource, time and budget limitations.

The fact that a CFE is not able to resolve specific questions posed by the client/employer in a case does not necessarily mean the CFE has failed to gather complete evidence. For example, a CFE might be retained to identify the source of stolen funds from a client company. Suppose that after reviewing relevant documents, interviewing witnesses and suspects, discussing the matter with management and taking other reasonable steps, the CFE determines that the fraudster cannot be identified. The CFE is still in compliance with the Standards because they have made a reasonable effort to complete the engagement.

Finally, the CFE's obligation to gather complete evidence extends only to the scope of the fraud examination — they are not obligated to collect evidence or follow leads that are outside the scope of the examination agreed upon by the CFE and the client/employer. However, CFEs should be mindful that under Section III.E.1 they are required to communicate to the client/employer any significant findings made during the course of the fraud examination. So if the CFE encounters a new lead or piece of evidence that is outside the scope of the examination, and if, in the CFE's judgment, the lead or piece of evidence would be significant to the client/employer, then it should be disclosed. After disclosure, it is up to the client/employer to determine if the scope of the examination should be expanded.

2. *Certified Fraud Examiners shall establish predication and scope priorities at the outset of a fraud examination and continuously reevaluate them as the examination proceeds. CFEs shall strive for efficiency in their examination.*

Guidance

According to this Standard, Members should not conduct fraud examinations without proper predication. As used here, *predication* is the totality of circumstances that would lead a reasonable, professionally trained and prudent individual to believe a fraud has occurred, is occurring or will occur.

The predication requirement applies only to the conduct of investigatory fraud examinations and does not bar CFEs from accepting other forms of engagements in circumstances where predication is lacking. For example, predication is not required for a CFE to conduct a risk assessment, provide consulting services or conduct a non-forensic internal or external audit.

This Standard also requires the CFE to identify the scope priorities of a fraud examination at its outset. Sections III.D.1 and 2 of the Standards require the CFE to reach an understanding with the client/employer about the scope and limitations of the fraud examination and to communicate changes as the fraud examination progresses. In order to do so, the CFE must first clearly understand what they believe the scope of the examination to be. The purpose of this Standard is to direct the CFE to constantly evaluate and identify the scope priorities of the examination and the underlying predication for the examination from the time it begins until its conclusion.

The CFE is obligated to communicate significant changes in the scope of the fraud examination to the client/employer (see Standard III.D.2). If new predication or scope changes are likely to cause significant changes to the examination — particularly increased costs or delayed deliverables — then the client/employer must consent to the changes before the CFE proceeds.

3. *Certified Fraud Examiners shall be alert to the possibility of conjecture, unsubstantiated opinion and bias of witnesses and others. CFEs shall consider both exculpatory and inculpatory evidence.*

Guidance

The requirement that CFEs must be “alert to the possibility of conjecture, unsubstantiated opinion and bias of witnesses and others” requires the CFE to exercise reasonable skepticism when conducting a fraud examination, particularly when interviewing witnesses and suspects. The CFE should maintain an open mind and objectively view the information provided by witnesses and suspects. The CFE should not begin any interview by assuming that a witness is either honest or dishonest, but instead should critically evaluate the information provided by that witness. The CFE should not accept questionable or illogical statements at face value, but instead should seek to corroborate such claims with other evidence before relying on them. The CFE should be cognizant of the potential motives that some witnesses or suspects might have for lying, which might include motivation to:

- Cover up their own wrongdoing or deflect suspicion away from themselves.
- Act on a grudge they have against the suspected wrongdoer.
- Conceal information to protect others from getting in trouble.
- Protect their own career by not revealing information that could offend or implicate their superiors.
- Avoid confrontation.
- Fabricate reasons for terminating the suspected wrongdoer.
- See the perceived perpetrators suffer punishment.

The second part of this Standard requires CFEs to consider both inculpatory and exculpatory evidence during the fraud examination. *Inculpatory evidence* is evidence that helps establish that a person is guilty or at fault, while *exculpatory evidence* tends to clear an individual from fault or guilt. For example, in an inventory theft case, records showing that an inventory manager signed for the receipt of missing merchandise, which was subsequently resold to a third party, might tend to inculcate the inventory manager. However, travel records showing that the inventory manager was out of town on business when the thefts occurred would tend to exculpate the manager.

The requirement that CFEs consider both inculpatory and exculpatory evidence is intended to help ensure that CFEs perform fraud examinations objectively and without bias. A CFE is permitted to develop a hypothesis of how a fraud occurred and who is responsible for committing it, but they still must objectively evaluate the evidence that is gathered to see whether the hypothesis is proved or disproved. For instance, if the CFE were to only seek out or retain evidence tending to show Suspect A had committed a fraud, while ignoring evidence that pointed to another suspect or tended to show Suspect A was not responsible, then the CFE would be found to have violated this Standard.

B. Evidence

1. *Certified Fraud Examiners shall endeavor to establish effective control and management procedures for documents, data and other evidence obtained during the course of a fraud examination. CFEs shall be cognizant of the chain of custody including origin, possession and disposition of relevant evidence and material. CFEs shall strive to preserve the integrity of relevant evidence and material.*

Guidance

This Standard requires CFEs to take appropriate steps to safeguard and preserve relevant evidence collected during fraud examinations, and to maintain effective chain of custody over such evidence. This is important for two primary reasons: (1) the evidence a CFE gathers might be useful to the client/employer or might even belong to the client/employer, and thus should be preserved; and (2) fraud examinations typically have the potential to result in legal action, including civil or criminal trials, so CFEs should strive to maintain evidence in such a way that it will be admissible in future legal proceedings.

The first sentence in this Standard provides that Members shall strive to institute “effective control and management procedures for documents.” The determination of what constitutes an “effective” control and management procedure will depend on the facts of the case. Large, complex investigations may require very detailed procedures for managing documents and evidence, while some non-investigatory examinations (such as fraud risk assessments or internal control reviews) may not require the gathering of any evidence at all. Generally speaking, the CFE’s goal should be to preserve and safeguard relevant evidence in a way that allows the evidence to be located and retrieved with reasonable effort given the circumstances of the engagement.

The second part of this Standard requires CFEs to “be cognizant of the chain of custody including origin, possession and disposition of relevant evidence and material. Certified Fraud Examiners shall strive to preserve the integrity of relevant evidence and material.” This reflects the notion that evidence gathered in a fraud examination might one day be required at a trial or other legal proceeding. Although rules of evidence vary depending on the jurisdiction, typically a piece of evidence will not be accepted unless its chain of custody can be established.

The *chain of custody* is both a process and a document that memorializes who has had possession of an object and what they have done with it. Essentially, the chain of custody records the transactions of possession from initial contact through the end of the case and up through litigation. Establishing the chain of custody for a document demonstrates its *authenticity* (i.e., the document is in fact what the party offering the document says it is), and it helps ensure that evidence has not been altered or changed from the time it was collected through production in court.

CFEs should take reasonable steps and adopt appropriate procedures to record and track the origin, possession and disposition of relevant evidence they gather during an examination so that they can demonstrate the chain of custody for that evidence. It is the CFE’s responsibility to determine what constitutes reasonable procedures depending on the factors of the examination.

This Standard only requires CFEs to preserve the integrity of *relevant* evidence and material. As noted earlier, *relevant evidence* is evidence that tends to make some fact at issue more or less likely than it would be without the evidence. Evidence that has no relationship to any of the issues in the case is irrelevant.

The fact that evidence gathered by a CFE is ultimately deemed inadmissible by a court of law does not necessarily mean that the CFE has violated this Standard. The Standard requires that CFEs must be cognizant of the chain of custody and must *strive to* preserve the integrity of relevant evidence and material. If a CFE makes a reasonable effort to preserve the chain of custody for relevant evidence given the facts and circumstances of the case, then they will not be deemed to have violated this Standard even if the evidence is ultimately ruled inadmissible at trial.

2. *Certified Fraud Examiners' work product may vary with the circumstances of each fraud examination. The extent of documentation shall be subject to the needs and objectives of the client or employer.*

Guidance

This Standard is intended to remind Members that their work product should be tailored to the specifics of each fraud examination and to the needs of each client/employer. The scope, resources and deliverables of fraud examinations might vary significantly from case to case. CFEs should strive to communicate clearly with client/employers throughout the course of examinations to make sure that their expectations are met.

What constitutes adequate documentation and work product is something that can vary greatly from case to case. In some fraud examinations, CFEs might produce voluminous records, boxes of evidence, detailed diagrams and so on, while in other cases CFEs might only be called upon to produce a brief report.

Also, these Standards do not mandate any particular form for the CFE's work product, nor do they specify the amount of documentation that is to be produced in a fraud examination. The key for the CFE is to ensure that their work product and documentation is reasonable given all the factors of the case, including but not limited to the agreed-upon scope, the needs and objectives of the client/employer, the time constraints of the examination and the client/employer's budget.

Section V. Standards of Reporting

A. General

1. *Fraud examination reports may be oral or written, including fact witness and/or expert witness testimony, and may take many different forms. There is no single structure or format that is prescribed for a CFE's report; however, the report should not be misleading.*

Guidance

This Standard provides a great deal of latitude regarding the form of fraud examination reports. CFEs may choose to present their reports orally or in writing (in fact, the Standard does not require that a fraud examination report be produced at all, although typically a report is required in most fraud examinations) and there is no requirement as to the structure or format the report should take.

The only specific requirement expressed in this Standard is that the report should not be misleading. Regardless of the report's format, the CFE is obligated to make a clear, accurate report so that the client/employer will not be confused or deceived about the CFE's findings and conclusions.

CFEs should be mindful that other Standards also have an effect on reporting obligations. In addition to Standards V.B.1 and 2 below, which address the content of the report, the following Standards might impact the CFE's reporting obligations:

- Standard III.A.3 requires that CFEs shall maintain objectivity in discharging their professional responsibilities. Thus, the fraud examination report must be objective and free from bias.
- Standard III.C.1 states that CFEs must exercise due professional care in the performance of their service, so the report must be prepared to the best of the CFE's ability with diligence, critical analysis and professional skepticism.
- Standard III.C.2 mandates that a CFE's conclusions must be supported with evidence that is relevant, competent and sufficient. Obviously, this applies to any conclusions contained in a fraud examination report.
- Standard III.E.1 says that CFEs must communicate significant findings made in the fraud examination to the client/employer, so a report might be mandated in some cases (though as noted earlier the report may be either written or oral, and it may be as formal or informal as the CFE and client/employer agree upon).

While no reporting structure is required by these Standards, it is advisable for the CFE and client/employer to agree in advance of the examination about the type of report to be produced, along with other anticipated deliverables. This will help prevent misunderstandings about the expectations for the CFE later in the engagement.

B. Report Content

1. *Certified Fraud Examiners' reports shall be based on evidence that is sufficient, reliable and relevant to support the facts, conclusions, opinions and/or recommendations related to the fraud examination. The report shall be confined to subject matter, principles and methodologies within the Member's area of knowledge, skill, experience, training or education.*

Guidance

In general, fraud examination reports should establish and document relevant facts, reach appropriate conclusions based on the available evidence and provide information to help the client/employer determine an appropriate course of action. This Standard requires that fraud examination reports contain evidence that is sufficient, reliable and relevant to support the facts, conclusions, opinions and recommendations related to the fraud examination.

Relevant evidence is evidence that tends to make some fact at issue more or less likely than it would be without the evidence. Evidence that has no relationship to any of the issues in the case is irrelevant and generally should not be relied upon.

Evidence is *reliable* if it comes from a trustworthy or believable source. Evidence is *sufficient* to support a CFE's findings and conclusions where the weight of the evidence is such that a reasonable professional could draw the same or a similar conclusion to that of the Member. As noted in the commentary to Section III.C.2, the fact that two professionals might draw different conclusions based on the same evidence does not necessarily mean that one of them has acted on insufficient evidence.

This Standard also states that examination reports should "be confined to subject matter, principles and methodologies within the Member's area of knowledge, skill, experience, training or education." Standard III.B.1 prohibits Members from accepting any assignment when they lack professional competence to perform the services required. Likewise, a CFE may not present facts or conclusions in a report that are outside the scope of the CFE's knowledge, skills, experience, training or education, nor is a CFE permitted to draw upon subject matter, principles or methodologies in the report when the CFE lacks professional competence in those areas.

A CFE may, however, meet the knowledge, skill, experience, training and education requirements necessary for the report through consultation or referral with other professionals who possess the requisite competence in a particular area or discipline. For example, a CFE who lacks any training or skills in data forensics may still produce a fraud examination report on a case that involved the recovery of data from a suspect's computer, provided that they consulted with or retained a professional with expertise in data recovery during the engagement and the report accurately reflects the facts, conclusions, opinions or recommendations provided by the expert.

2. *No opinion shall be expressed regarding the legal guilt or innocence of any person or party.*

Guidance

Standard III.C.2 permits CFEs to draw reasonable conclusions in a fraud examination if those conclusions are supported by evidence that is relevant, competent and sufficient. However, this Standard, which is taken directly from Article Five of the ACFE Code of Professional Ethics, makes clear that those conclusions may not include the CFE's opinion regarding the legal guilt or innocence of any person or party.

The reason for this rule is to prevent the CFE from inserting themselves into the role of the judge or jury. The CFE's job in a fraud examination is to present evidence and draw reasonable conclusions from that evidence. But the CFE should draw a clear line between a report that essentially says, "Here is the evidence and the conclusions that can be drawn from it," and one that steps over the line and says, "Suspect A is guilty of committing fraud."

If a person is guilty (or innocent) of a crime is not a decision for the CFE to make. That determination must be made by a judge or jury. The CFE might adamantly believe that a

suspect has committed fraud, but until that suspect has been convicted by a court of law, they are not guilty.

The CFE may still draw reasonable conclusions about a person's misconduct without violating this Standard. For example, it is permissible for a fraud examination report to include conclusions that a person misappropriated cash, misrepresented a transaction, concealed funds and so on. Provided that it has a reasonable basis in fact, any conclusion of this sort that focuses on a person's conduct, rather than on their legal guilt or innocence, is permissible.

A CFE's report may also contain evidence and conclusions relating to every element of a particular crime. For example, suppose a criminal fraud statute has four elements:

- (1) a material false statement
- (2) made with knowledge of its falsity
- (3) which was relied upon by a victim and
- (4) which caused harm to the victim

Presuming that the evidence supports those elements, the CFE would be permitted to draw conclusions that a suspect made a material false statement, that the suspect knew the statement was false, that the victim relied upon the suspect's statement and that the victim suffered harm as a result. All of these conclusions focus on the conduct of the suspect or the victim and could be reasonably supported by the facts of the case. But this is where the CFE's conclusions must stop. They are not permitted to then give the opinion that the suspect is guilty of the crime of fraud, because that decision must be left to the judicial system.

The following are examples of permissible statements that would not violate the prohibition against opinions of guilt or innocence.

“It is my opinion that [Client] has suffered losses of \$XXX as a result of cash skimming and payroll disbursement schemes between [Date 1] and [Date 2] (Exhibit A).

Of the amounts identified as losses, \$XXX is attributable to a cash skimming scheme whereby your company billed and collected revenue from tenants but the funds were deposited to [Shell Company Name] bank accounts (Exhibit B). We can confirm that [Shell Company Name] LLC is owned by [Subject]. We identified a total of 12 customer checks diverted away from your accounts and into the [Shell Company Name] accounts. Our investigation shows a systematic and contemporaneous manipulation of [Client's Name] accounting file each time your revenues were diverted.

In addition, we have analyzed your Company's payroll records. It is my professional opinion that [the Subject] overpaid themselves \$XXX in gross pay by overstating hours worked. As a result of this overpayment, [Client's

Name] overpaid employer-related taxes of \$XXX. Our analysis of the XXX payroll scheme can be found at Exhibit C.”

Additionally, the rule does not prohibit CFEs from presenting a statement attesting to the sufficiency of evidence if, during the course of a fraud examination, they develop an opinion that a crime has been committed. For example, a CFE could write a report that states:

“Given the investigation and evidence presented in this report, there is sufficient evidence to believe that [the Subject] might have committed a crime, and I recommend that this matter be referred to the appropriate law enforcement agency for investigation.”

The rule against opinions on guilt or innocence also does not prohibit judges or officers of courts or tribunals from performing their essential functions, such as advocating for or against a guilty verdict or determining guilt or innocence. For example, it is not a violation for a prosecutor who is a CFE to argue before a judge or jury that the defendant is guilty. Similarly, it is not a violation for a defense attorney to argue that a client is not guilty.