"Ethics for Pecuniary Damage Experts"
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for
Collegium of Pecuniary Damage Experts
www.CPDE.info
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http://dictionary.reference.com/browse/ethics
1. (used with a singular or plural verb)
a system of moral principles: *the ethics of a culture.*

2. the rules of conduct recognized in respect to a
particular class of human actions or a particular group,
culture, etc.: *medical ethics; Christian ethics.*

3. moral principles, as of an individual:
*His ethics forbade betrayal of a confidence.*

4. (usually used with a singular verb)
that branch of philosophy dealing with
values relating to human conduct,
with respect to the rightness and wrongness of certain
actions and to the goodness and badness of the motives
and ends of such actions.
LAW IS NOT ETHICS. 
ETHICS IS NOT LAW.

Law is not the minimum for ethics. 
Often, not always, ethics guides design of law. 
Law is about rules for groups: expect poor fit.
Law is objective.

Thus, for the law: $=$ $\neq$ $\equiv$

Thus, for the law: $=$ $=$ $\approx$

ethics of the individual: perfect tailor (subjective) 
versus
ethics of a profession: off the rack (objective)
NUREMBERG PRINCIPLES
The core principle is that you are you even when you are not you.

Generically, an agent acts instead of and on behalf of the principal when the agent acts within the scope of authority. Thus, the principal is legally liable for the acts of the agent.

But always, the agent is personally present in the agent's actions. Thus, the agent always is ethically liable for the acts of the agent.
helpful items from
ABA Model Rules of Professional Conduct
Rule 1.0 Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
helpful items from
ABA Model Rules of Professional Conduct
Rule 1.0 Terminology

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
Minimum life care plan.

Not life care plan.

Instead the "minimum life care plan".
IS THERE "TRUTH"?
Dr. Frank-N-furter, a.k.a., Rules of Evidence

Let's assume there is at least one truth.
Let's assume it is likely there are multiple truths. Which truth appears depends on how we look (e.g., CPA v. appraiser v. expert witness).

How many can you handle?
Which ones do you prefer?
Which ones do you use?
When do you switch?
FACT VERSUS OPINION
Fact witnesses versus opinion witnesses

"White" versus "value": degree of scatter in the opinions

To be a fact is proof: necessary? sufficient? neither?
CONFLICTS OF INTEREST
Conflicts can not be minimized to zero.
Conflicts always are present.
Conflicts always must be managed.

first, identify
second, avoid
third, manage

disclose *versus* consent *versus* abstain
disclose to who?
consent from whom?
WHO ENFORCES ETHICS?
individual: always
you are your brother's keeper: but who is your brother?
personal enforcement _versus_ process

WHAT IS THE ROLE OF A CODE OF ETHICS?
code as advice (note fork in road)
code as boundary (your lane is 12 feet wide)
code as requirement (pass on left)
code as punishment (DUI costs 6 points)

DO NOTE:
GROUP BUSINESS ETHICS CAN BE A FELONY.
A group boycott is a _per se_ unreasonable restraint of trade.
TO WHOM DO YOU OWE ETHICS?
Do you have an ethical claim on you; or do only others have an ethical claim on you?

Client *qua* your principal?

Client *qua* your brother?

Profession *qua* your karass or granfalloon?

Profession *qua* your authorizer?

Society *qua* your mother?

Society *qua* your self writ large?
CONFIDENTIALITY:
WHO GETS IT AND WHO PROVIDES IT?

GETS IT: client & court & you

PROVIDES IT: you & attorney & court

WORK PRODUCT: attorney's

TRADE SECRET: client's (& you?)
Effective
Thinking about
Honesty,
Integrity,
Character, and
Suitability

from Michael G. McMillan, Ph.D., CPA, CFA
http://blogs.cfainstitute.org/investor/author/michaelmcmillan/
(1) **Attorneys** do not **hire** experts unless they anticipate that there is a reasonably likelihood that the opinions of those experts will be **helpful** to their cases.

(2) **Attorneys** do not **name** experts whose opinions are not helpful.

(3) Some economic **experts** use **assumptions** that typically result in opinions **favorable to one side** of litigation so that some forensic economic experts are thought of as plaintiff oriented and others as defense oriented.
(4) Most economic experts are ethical in the sense that they do **not change essential methods** if thought to be plaintiff oriented, but hired in particular cases by defense attorneys, or if thought to be defense oriented, but hired in particular cases by plaintiff attorneys.

(5) Most economic experts are ethical in the sense that they **tell the truth** when asked questions in deposition and in cross examination at trials.

(6) Exceptions become well-known for being exceptions, particularly among other forensic economic experts.

(7) Overall, economic experts are a pretty ethical bunch.
AAEFE CODE OF ETHICS:
As a practicing forensic economist and a member of the American Academy of Economic and Financial Experts, I pledge to provide unbiased and accurate economic analysis for all litigation related engagements, to strive to improve the science of forensic economics, and to protect the integrity of the profession through adherence to the following tenets of ethical practice:

Employment: While all forensic economists have the discretionary right to accept retention for any case or proceeding within their expertise, they should decline involvement in any litigation when asked to take or support a predetermined position, when having ethical concerns about the nature of the requested assignment, or when compensation is contingent upon the outcome.
Honesty and Candor: Forensic economists shall be honest, thorough and open in their analyses and shall not provide the retaining or opposing attorney or the court, any information, through commission or omission that they know to be false or misleading. They shall exert due diligence, and at all times strive to use competent judgment to avoid the use of invalid or unreliable information.

Disclosure: Forensic economists shall clearly state the sources of information and material assumptions leading to their opinions. Such disclosure should be in sufficient detail to allow identification of specific sources relied upon, and replication of the analytical conclusions by a competent economist with reasonable effort.
Neutrality: Forensic economists shall at all times attempt to operate from a position of neutrality with respect to their calculations and analyses. Whether retained by the plaintiff or the defense, the approach, methodology and conclusions should be essentially the same.

Knowledge: Forensic economists shall at all times attempt to maintain a current knowledge base of the discipline and shall provide the retaining attorney with the full benefit of this knowledge regardless of how it may affect the outcome of the case.
Responsibility: Forensic economists shall at all times strive to practice within the boundaries of professional and disciplinary honesty and fairness. To this end, they must assume the responsibility of holding their colleagues in the profession accountable to the ethical principles promulgated herein.

http://aaefe.org/ethics-statement
NAFE Statement of Ethical Principles and Principles of Professional Practice

Forensic economics is the scientific discipline that applies economic theories and methods to matters within a legal framework. Forensic economics covers, but is not limited to:
The calculation of pecuniary damages in personal and commercial litigation.
The analysis of liability, such as the statistical analysis of discrimination, the analysis of market power in antitrust disputes, and fraud detection.
Other matters subject to legal review, such as public policy analysis, and business, property, and asset valuation.
NAFE Statement of Ethical Principles and Principles of Professional Practice, continued #1

When providing expert opinion for use as evidence by the trier of fact, a NAFE member pledges, as a condition of membership, adherence to the following:

1. **Engagement:** Practitioners of forensic economics should decline involvement in any litigation when they are asked to assume invalid representations of fact or alter their methodologies without foundation or compelling analytical reason.

2. **Compensation:** Practitioners of forensic economics should not accept contingency fee arrangements, or fee amounts associated with the size of a court award or out-of-court settlement.
NAFE Statement of Ethical Principles and Principles of Professional Practice, continue #2

3. Diligence: Practitioners of forensic economics should employ generally accepted and/or theoretically sound economic methodologies based on reliable economic data. Practitioners of forensic economics should attempt to provide accurate, fair and reasonable expert opinions, recognizing that it is not the responsibility of the practitioner to verify the accuracy or completeness of the case-specific information that has been provided.
NAFE Statement of Ethical Principles and Principles of Professional Practice, continue #3

4. Disclosure: Practitioners of forensic economics should stand ready to provide sufficient detail to allow replication of all numerical calculations, with reasonable effort, by other competent forensic economics experts, and be prepared to provide sufficient disclosure of sources of information and assumptions underpinning their opinions to make them understandable to others.
5. Consistency: While it is recognized that practitioners of forensic economics may be given a different assignment when engaged on behalf of the plaintiff than when engaged on behalf of the defense, for any given assignment, the basic assumptions, sources, and methods should not change regardless of the party who engages the expert to perform the assignment. There should be no change in methodology for purposes of favoring any party's claim. This requirement of consistency is not meant to preclude methodological changes as new knowledge evolves, nor is it meant to preclude performing requested calculations based upon a hypothetical—as long as its hypothetical nature is clearly disclosed in the expert's report and testimony.
NAFE Statement of Ethical Principles and Principles of Professional Practice, continue #5

6. **Knowledge:** Practitioners of forensic economics should strive to maintain a current knowledge base of their discipline.

7. **Discourse:** Open, uninhibited discussion is a desired educational feature of academic and professional forensic economic conferences. Therefore, to preserve and protect the educational environment, practitioners of forensic economics will refrain from the citation of oral remarks made in an educational environment, without permission from the speaker.
NAFE Statement of Ethical Principles and Principles of Professional Practice, continue #6

8. Responsibility: Practitioners of forensic economics are encouraged to make known the existence of, and their adherence to, these principles to those retaining them to perform economic analyses and to other participants in litigation. In addition, it is appropriate for practitioners of forensic economics to offer criticisms of breaches of these principles.