

CREATING A CODE OF ETHICS

**The following text is based on work done by Navran Associates
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What is a Code of Ethics?

In its simplest form a Code is a statement of the core principles and values to be used in guiding the organization in the fulfillment of its mission, in the pursuit of its vision. It includes standards based on law and regulation, policy and procedure and ethics and values. It communicates what the organization requires, expects and will accept when it comes to implementing the “common sense” of what is right, fair and good.

But a Code is more than a list of values. It places those values in an organization-specific context. It takes the principle and exemplifies it through specific relevant examples that are often supported by policy, procedure, law and regulation.

Consider “fairness”. There are any number of ways fairness plays out in the organization. It certainly applies to how we treat customers – giving fair value. It is present in relations with suppliers – ensuring that suppliers have a fair process by which they compete for our business. And how we treat employees – with a fair set of performance standards, processes for determining salary and benefits, disciplinary procedures and criteria by which we select those to receive pay increases and/or be promoted to higher-level positions.

But what is “fair” in these matters? To some extent it is what the organization, society and affected stakeholders agree that it is. Values so inconsistently defined create uncertainty and it is just that uncertainty that obligates the ethical organization to deliberate, decide how it defines “what is fair”. And the process is the same for all of the relevant values. The Code can then communicate what the organization has deemed to be its ethical standards and expectations.

The EthicsSA Definition

In this context it may be useful to address an emerging consensus in the South African organizational community on the use of the terms Code of Conduct and Code of Ethics.

It is becoming commonplace to differentiate between a Code of Conduct which focuses on enforceable compliance with law and regulation and a Code of Ethics which builds from the compliance base and expands it to include the more “aspirational” goal of doing what is “right, good and just”, even if one is not compelled to do so by law.

The result is a Code of Ethics that treats legal and regulatory compliance as a minimum and then sets the higher standard of doing what is right, good and just – not merely what is required by law and regulation.

Throughout this text we consistently refer to Codes of Ethics, since Codes of Conduct are seen as inadequate in light of King II, the US FSGO and other emerging global ethics standards.

Nature of Codes

Another way of understanding the differences between Codes of Conduct and Ethics is to examine their “nature”. Codes can be understood as having two “natures” or aspects – aspirational and enforceable.

Aspirational

The aspirational aspects of a Code detail ethical standards which employees should strive to attain. There is no expectation that every employee will always meet the standard, nor is there a provision for sanctions in the event of failure to meet an aspirational standard. In part, this is because aspirational aspects do lend themselves to objective observation and measurement.

For example, “honesty has an aspirational aspect. We may want to encourage employees to be open, forthright, and forthcoming in how they share information, opinions and perceptions. Typically, that would include the expectation that they not remain silent when they have certain information. But there may be circumstances where an employee is unwilling to present an opinion. That may be unfortunate – but is typically not punishable unless the employee is directly asked and lies. “Dishonesty” by passive omission is discouraged in ethical organizations, but rarely punished.

Enforceable

An enforceable code element states the standard and the clear expectation that all employees will meet that standard or face sanctions. In this case there is an expectation that every employee will always meet the standard, and there are provisions for sanctions in the event of failure to meet the standard. In part, this is because aspirational aspects do lend themselves to objective observation and measurement.

To continue with the honesty example; deliberately supplying false information on timecards, expense reports, or other official documentation is prohibited and punishable. Even repeated “errors” in such reporting may be punished. Here the organization has the right and wherewithal to set and enforce a standard of honest and accurate reporting.

Benefits of a Code of Ethics

Codes bring benefits to organizations that create them – if they are well motivated, intelligently created and effectively implemented. A poorly conceived and executed Code may be a detriment to the ethics of the organization in that it fails to communicate the desired standards and creates a

false impression and sense of accomplishment that “we can tick off the box marked, Create a Code”.

Several of the more notable potential advantages of an effective code are shown below (in alphabetical order so as not to suggest priorities).

Build consensus

Earlier we discussed the notion of the organization having a “common sense” - a consensual understanding of what is expected, required, discouraged and prohibited. Codes, when they are active documents (as opposed to documents that are distributed and “filed” never to be read/used) can contribute to that consensus.

Build trust - internally and externally

Trust has been defined as “the residue of promises fulfilled.” Codes can create the promises by making expectations clear and providing a vehicle for employees to commit to those expectations – It should be noted that using a Code – the commitments/promises flow both from the “top down” and “bottom up” so that trust can be built in both directions.

Communicate organizational expectations and requirements

Do not underestimate how important it can be to make the organization’s expectations and requirements explicit. Clearly communicated expectations and standards are necessary to create the “common sense” needed to ensure that people share an understanding of what is needed for success and the boundaries that limit how success is pursued.

Discourage misconduct

Not every inappropriate employee action is the result of a deliberate choice of the decision-maker to violate a known standard. In many cases, it can be the consequence of ambiguity, uncertainty and a general lack of awareness of where the boundary lies between the acceptable and unacceptable. Codes minimize that ambiguity by clearly defining organizational expectations, standards and boundaries.

Encourage the seeking of advice

A well drafted Code not only answers numerous questions – it also helps frame critical questions that it does not directly answer. It points out to the decision maker what they “know” and what they are “assuming”. In the descriptions of supporting systems, it also describes where one goes for an authoritative answer when one has a question regarding ethical standards and/or conduct.

Enhance good governance/leadership

Both leadership and governance concern themselves with ensuring that the organization pursues its strategic goals within agreed-upon limitation of conduct. It should be noted that both leadership and the Board are constrained by the same values and provisions that define general employee conduct in the Code. To the extent that the research has demonstrated the destructive nature of the “double standard” in organizations, that constraint contributes to the consistency, quality and effectiveness of both leadership and governance.

Facilitate dialog about ethical issues

Recent research underscores that organizations and employees overwhelmingly believe that what their leaders talk about is a clear insight into what those leaders think is important. If leaders talk about safety, people pay attention to safety. They talk about quality and people pay attention to quality. When leaders talk about ethics and values people in those organizations believe that ethics and values are important. If you are silent, beware. Silence is understood as disinterest and irrelevance.

Foster the reporting of problems

Increasingly, organizations are articulating an “affirmative obligation” on the part of employees to report suspected and/or observed ethical misconduct to the appropriate authorities within the organization. Codes more clearly define “unethical conduct” and detail the processes whereby employee may report what they have observed. They also articulate the organization’s commitment to protect whistle-blowers and may go so far as to detail how that process functions. The reported result I recent research is an increasing willingness by employees to use such process if they believe them to be both safe to use and effective in addressing the misconduct.

Guide decision-making

It is becoming more common for Codes to include a simple ethical decision making guide or process, often in the form of questions a decision maker might ask to test the alternatives under consideration. Simple questions such as:

- Is this legal?
- It is consistent with company policy?
- Does it meet the standards set out by the company’s values
- Am I comfortable that it meets my personal sense of right, fair and just?
- Can I be proud of this choice/
- Would it withstand public scrutiny?

Increase awareness of ethics issues

By making ethics a legitimate subject and providing a common language for discussing ethics issues and asking ethics-related question Codes increase awareness that there are ethical consideration in many, if not most, of the decisions we face in the workplace. This is contrary to

the more common perception in organizations without effective Codes that ethics issues are rare, obvious and easily resolved –clear cut matters of “right versus wrong”.

Inspire ethical conduct

There is an emerging body of research that describes organizational conditions that are consistent with and/or contribute to higher levels of employee misconduct. The absence of a Code and the lack of training on the Code and how it is used are now understood to contribute to a higher rate of employee misconduct.

Inspire confidence and comfort in decision makers

One of the positive consequences of communicating ethical standards and teaching ethical reasoning is that employees become more competent and confident:

- Competent to make the ethical choices we want and need them to make
- Confident that they have the ability to do so and that the decisions they make will be supported by the organization and their own leadership – because they know what is expected and required for success.

Provide a basis for ethical judgment and decision-making

We cannot presume that even our most “ethical” employees are necessarily equipped to recognize the ethical challenges inherent in many business situations. Nor can we reasonably expect them to have the ethical reasoning skills needed to reach the optimal ethical outcome. If we want ethical outcomes we are obligated to teach our employees how we want them to reach those outcomes. Codes are a good start in that direction.

Provide a basis for accountability and enforcement

Fairness dictates that we not hold people to unknown standards. Accountability dictates that people ought be held to known and understood standards. By making standards explicit and known accountability is enhanced when there is a Code.

Reduce risks

One must be cautious in discussing how Code may reduce risk. Recent corporate abuses vividly remind us that a Code is not a substitute for ethical judgment or honest intention. Codes do not make ethical people out of unethical people. What they do is make it easier for ethical people to consistently and predictably recognize ethical issues and seek/develop ethical responses. They make it easier for those who want to do the right thing to do so – and the risk of inadvertent unethical conduct goes down.

There is an increasing body of evidence that organizations with effective Codes are perceived by their employees and other key stakeholders as having a “strong ethical culture”. We also know that such a culture further discourages misconduct. An ethical culture communicates that misconduct will not be tolerated.

Finally, the risk issue must also address consequences. As the FSGO notes, courts give organizations some “credit” for making a good faith effort to prevent and detect misconduct”. In the presence of an effective Code and supporting systems, such misconduct is seen by the courts as an “aberration” rather than representing the intent or tacit approval of management.

Creating a Code of Ethics

As we examine the creating of a Code of Ethics we will first consider process and then content.

Model Code Development Process

What is detailed below is a “model” process. Most organizations that develop effective Codes of Ethics find themselves doing much or most of what is presented. Rarely does any one organization do everything – but every step should be considered, since each has a purpose and adds value to the process. Essentially, we suggest that the more closely you adhere to the model process the better the probable outcome.

Step 1 - Get leadership commitment

Essentially, the Code is only going to be as effective as leadership chooses to make it. The “best” Code absent active leadership support will have minimal impact on the culture of the organization. A barely adequate code can have significant impact if promulgated by committed and effective leaders. The ideal is a well crafted code energetically supported by “leaders” who enjoy the respect and support of those they lead.

Step 2 - Define success and set goals

As is so often the case, knowing where you are trying to go – what you are trying to accomplish – is a prerequisite to defining the best path to getting there. Equally important is a sense of the status quo. Defining success and setting success-dependant goals regarding development of your Code and its supporting systems requires that you be able to answer several critical questions:

- What values do key stakeholders currently believe are in operation within the organization? There is always an operative set of values – even if they have never been discussed, decided and or communicated. Observers will note behavior and deduce the “operational” values that are driving that behavior. That can be called the “status quo ante” – the current set of values at work within the organization before the onset of any new ethics initiative.
 - What behaviors is the organization motivating that may or may be desirable or acceptable?
 - What is motivating those behaviors
 - What does the organization informally communicate as its highest priorities?
 - What does it measure (formally and informally)?
 - What does it reward (again, formally and informally)?
 - Note: here is where an understanding of organizational development concepts can prove invaluable – e.g., Nadler’s Congruence model.
- How does the status quo ante compare with the desired future state (status quo post)?
 - What aspects of the current state are not desirable or acceptable?

- What support exists in the organization for movement from “ante” to “post” and what resistance might such a change effort meet?
- What values do key stakeholders currently believe are most appropriate for the organization?
- In what specific challenges, circumstances, conditions or decisions would the organization benefit from those key stakeholders having a better understanding of how the preferred values are to be implemented?
- Who is best suited to take this information and use it to craft an “official” position regarding the organization’s values and their implementation/application to critical behaviors?

It is the ability to answer these questions - this description of the current and desired organizational culture that ought to drive the Code development process.

Step 3 - Assemble your team

Increasingly organizations are seeing the clarification of their values and development of a Code of ethics as a participative process – involving more than a small committee sequestered and told by someone in authority, “Write us a Code.”

The current preferred method of Code development starts with the creation of a task team representing the most significant constituencies and guided by the ethics officer or an appropriate consultant.

Step 4 - Clarify the desired set of values

If there is no preexisting formal statement of values, the first task this team might undertake is to review the data gathered in Step 1, and from that develops a suitable set of organizational values – typically no fewer than three and no more than a seven take the answers to the questions raised above and other relevant questions and create a values statement.

If there is a preexisting values statement it should be reviewed for relevance and consistency with the desired future state. As an example, a project with a state governmental agency in the US several years ago started with recognizing that their existing values statement was too long (19 separate values) and ineffective in that employees neither knew all of the values or could they consistently describe what they intent of any individual value might be in “behavioral” terms – in terms of describing what they should or should not do.

Whatever values are selected should then be defined in language that is both clear and relevant for those whose decisions and actions the organization wants to guide/influence.

- Provide ongoing communications
- Monitor code related behavior and questions
- Update as required

Step 5 – Determine the essential standards and behaviors the Code should address

The teams' task at this point is to determine how the values should affect behaviors – what specific behavioral outcomes the organization desires the Code to support and/or suppress.

The process is to “behavioralize” the values into what are often called the Code’s Provisions”. Code Provisions illustrate how the values relate to specific actions and behaviors routinely performed and the outcomes desired within the organization. Choosing the appropriate illustrative behaviors gives the Code relevance and utility. For example:

“Respect” is a commonly cited value. How it is described ought to relate directly to what the organization believes is present in the current state and/or desirable in the future state.

- Many US organizations tie “respect” to “diversity” in the Code’s Provisions – respect for all persons as a function of their inherent worth without regard to age, gender, race, ethnicity, etc.
- Others use “respect” as a bridge to their positions opposing harassment and/or the misuse of power or position.
- Still others chose to emphasize respect for customers, clients and strategic partners.
- Some link respect with teamwork and working collaboratively with peers.
- In one recent example, respect was illustrated with an admonishment against gossip and encouragement to talk “with” each other rather than “about” each other when there are problems among coworkers.

Step 6 – Integrate the Code provisions into the organization’s context/culture

The team’s next challenge is to integrate the values and Code provisions into the context of policy and procedure. This is the process of using the Code provisions as a “bridge” between the somewhat abstract and general direction provided by the values and the quite detailed explanation of the specific expectations and requirements present in policy and procedure.

This level of integration is often accomplished by the simple process of footnoting the Code Provisions with mention of relevant laws, regulations, policies or procedures that further inform the reader who needs or desires that level of detail. For example, the “respect” language, above, might be enhanced with a footnote reading, “For more information on the organization’s commitment to a harassment-free workplace see HR Policy ABC123.”

Step 7 - Flesh out the values statement and draft Code provisions with other critical Code components.

These additional Code elements typically include an introduction, the pre-existing mission, and vision statements, an executive level introduction to the Code and a prologue describing how the Code is to be used, before the actual Code provisions are laid out.

Following the detailed Provisions there may be reference to supporting systems and structures, guidelines on implementation of the Code and its provisions, an ethical reasoning and/or decision making model, a statement of personal responsibility and a glossary of key words and phrases.

Step 8 – Get others involved

It is critical for the team to solicit feedback from an expanded group of interested stakeholders. Very often the ethics function is supported by a committee, council or other coordinating body that represents most of the organization's most influential line and staff functions. This can be an excellent source of representatives to the team writing the code and at the more senior level, the ideal group to review the draft Code prior to it being presented to the final approving authority (CEO/Board).

Step 9 - Integrate the reviewers' comments, as appropriate, and prepare a draft suitable for executive review and approval

Every review comment is worth examination and discussion within the team (with some teams using a sub-group to complete the first "screen" of the reviewers' input.

- Example: This process was used in 2000 with the World Bank Group in Washington, DC. They employed an extensive "peer review" that yielded over 600 comments.
- A sub-group of the Code team screened to comments for patterns and trends and reported that compiled list to the Code team as a whole.

It is worth noting that review comments do not always require Code edits. In some cases they may simply highlight, issues, concerns or areas that need additional examination when the Code is rolled out to the employees – e.g., in ethics awareness training.

So while it is crucial to assess the reviewers' comments, the mere presence of a comment does not always require a Code modification. What it does require however is an acknowledgment of the comment to the reviewer with an explanation of the team's decision vis-a-vis that comment.

Step 10 – Submit the Code for executive level approval

Obtaining final approval of the proposed Code from leadership is a necessary prerequisite at this point in the process. One useful point in this regard is to be sure the approving leadership is briefed on the process steps employed thus far –especially the expanded review process. This can often build their confidence in the proposed document and limit their predictable propensity to "wordsmith" the text.

The Content

“Process” is half of what is needed to create an effective Code of Ethics. It describes the steps to reach the desired outcome. The other half is the content. Content ought to include most or all of the following.

- A meaningful title
- Organizational mission and vision
- Introductory letter
- Table of contents
- Organizational values
- Prologue to the provisions
- The Code provisions
- Code support systems and structures
- Ethical decision-making process
- Statement of personal responsibility

A meaningful title

What the organization chooses to call its Code of Ethics communicates one key piece of information regarding how the Code fits into the perceptions of senior leadership. More and more organizations are moving away from a generic title, e.g., “Company ABC’s Code of Ethics” and opting for a title that suggests the Code’s significance to the organization and its key stakeholders.

Some examples of Codes with “descriptive” titles, include:

Creating and Sustaining our Organizational Culture
Living Our Values
Values for Excellence
Keeping the Public Trust
Living By Our Core Values
Guidelines to Practice
Our Creed and Canons

Organizational mission and vision

Codes are built on values and values are often viewed as inexorably linked to Mission and Vision – as has been the case since the early efforts to standardize strategic thinking and planning according to a common organizational theory.

Given that connection, many Codes use the Mission and Vision as launch points featuring them prominently in the early text of the Code document. Very often they are found on the inside cover or the front piece of the Code document.

Introductory letter

The Introduction presents the Code to the reader and communicates its significance. Typically the introduction is written (or at least signed) by the organization's senior-most executive. The intent is to communicate significance and seriousness. The standards are important and the organization "means it".

To this end the introduction should contain most or all of the following – in a simply worded, one-page (or less) letter from the executive to the reader:

- **Definition and Purpose** – what this Code (and is not) is and why the organization chose to develop it.
- **Nature of Codes** – the notion that a Code presents standards, some of which are enforceable and others that might better be described as aspirations rather than requirements.
- **Benefits** – the value the Code brings to both the organization and the individual reader (employee).
- **Code Development Process** - an acknowledgment of the team who crafted the Code and a "thank you" for their effort.
- **Living Document** – reference to the fact that Codes are never "done" and this Code will continue to be revised and refined as needed going forward
- **Personal Commitment** – a clear promise that the Code applies equally to all employees, at all levels, and that the senior executive (signer of this letter) pledges to abide by its standards and urges all readers/employees to do likewise.

Table of Contents

A Table of Contents is a simple enough item but one worth mention. Tables of Contents (and in some more complex codes, indices) convey that this is a document that serves as a reference – it is not a novel to be read from cover to cover, once, and relegated to a shelf or drawer. Rather it is a reference document – a management and decision-making tool, that is organized in a manner that facilitates its use in guiding decision makers. Thus it needs to be easy to navigate and a Table of Contents facilitates navigation.

Secondarily, the Table of Contents serves to remind us to number the document's pages. Failing to provide page numbers could be a simple oversight (or in one case a stylistic choice by a graphics designer who failed to grasp the document's core purpose) that could render a Code of any significant length or complexity nearly useless.

Organizational values

The need for having a values statement has already been addressed. That statement – the individual values simply defined – needs to appear in the Code. Often, immediately following

the Table of Contents as the first “Code-specific” piece text is a good place for the values to be presented. Other placements are equally valid, but we often suggest positioning the values statement just prior to the “Prologue” which immediately precedes the Code provisions – so the tie between values and provisions is highlighted.

Prologue to the provisions

Codes need to be usable documents and that utilitarian bent means that there need be a selection process for determining those Code provisions that best serve the organization and its employees. In essence, this means some criteria must be detailed as to which Code provisions are most relevant to the organization’s purposes for creating a Code - which are most deserving of being highlighted and discussed.

–It is unrealistic to expect that a Code will address all relevant issues so selection is a must – but it should follow some line of reasoning based on the organization’s needs and goals. The Prologue is used to point out that the values – the fundamental principles thy organization has adopted as its “Core” standards – both under gird the Code and supplement it when employees encounter situations the Code does not address

The Prologue is that portion of the Code that communicates:

- How the values are those fundamental principles that all employees should consider every time they make a business decision and/or act on behalf of the organization
- That the following Provisions are significant examples of how the organizations Core Values can be translated into behaviors
- That the behaviors shown in the Provisions describe only some of what is expected and/or required by all those covered by the Code
- That the behaviors were selected as widely applicable examples, but
- The Provisions are merely illustrative – many other behaviors, not detailed in the Code, are still expected and/or required because they conform to the Values.

The Prologue can also foreshadow the organization of the Provisions section – which truly is the heart of the Code. One common organizational scheme is to sort Code provisions under the values. If that scheme is employed it them becomes useful to point out to the reader that where a specific Provision is placed is not “absolute”.

For example, provisions related to honest and accurate reporting could fit under “Integrity” or “Honesty”. Provisions underscoring the organization’s commitment to prevent could be listed under “Respect”, “Integrity”, “Fairness” or “Compassion”. Reality dictates that there are times when the placement of a specific behavior under a given Provision may boil down to something as mundane as aesthetics or balancing the amount of text under different values so as not to convey differences in their importance.

The Code provisions

Since some employees, when consulting the Code, will not read (or re-read) the Prologue, it is strongly recommended that each major section of the Provisions be prefaced with a brief reminder that these behaviors are illustrative examples – and do not cover every possible application of the Core values.

For every provision selected to illustrate the values applied within the organization it can be useful to:

- Define the issue(s)
- Relate the issue(s) to relevant value(s)
- Provide illustrative examples of specific behaviors
- Provide references to applicable policies

Selection of Code Provisions

What follows is an alphabetical listing of some of the more common subject areas addressed in the Provisions section of Codes of Ethics. You will note several are “compliance-oriented” and readily enforceable - suitable for a Code of Conduct. Others are more aspirational and truly suited to be featured in a Code of Ethics. We typically expect to see a reasonable mix of both types of Provisions.

You will also notice that there may be several “variations” on a theme, e.g., Contracting - Procurement, Gifts – Gratuities - Entertainment, Insider Trading and Relations with Vendors - Suppliers all address various aspects of the general issue of Conflicts of Interest – behaviors related to the “Fairness/Justice” value.

The process of selecting Provisions should be based both on the organizations short-term needs to address immediate ethics challenges and long-term goals – the vision of the ideal organizational culture.

Commonly Cited Provisions

In this section each issue is briefly defined and/or an example provided

Accuracy of Books and Records

The expectation that all employees will provide only factual, supportable data in any and all official records (e.g. timesheets, expense reports, inventories, tax records, contracts, invoices, etc.). This includes, but is not limited, to financial reporting. Typically, this is prefaced with a reminder as to why such accuracy is an absolute necessity and further referenced to specific laws/policies that reinforce that necessity.

Accuracy of Expense Accounts

This is a subset of the expectation that all employees will provide only factual, supportable data in any and all official records. It is often used in organizations where

significant numbers of employees travel on company business, work off company premises and/or incur reimbursable expenses on the company's behalf.

Anti-Trust

This provision typically reflects legal constraints on collaborative practices within an industry that could "harm" the customer/consumer. Examples include splitting territories, fixing prices or otherwise colluding with competitors in a manner that interferes (or could be perceived as interfering) with free and open competition.

Anti-Corruption / Anti-Bribery

A prohibition against any direct payment to individual decision makers or service providers intended to influence their decision – e.g., bribes to government officials to influence the awarding of contracts, or smaller "facilitating payments" to lower level employees to accelerate service such as the issuance of permits. While not limited to public employees, that appears to be the current focus.

Computer Usage

Definition of what is not permitted regarding personal use of the organization's computer system – e.g., "personal" access to the internet and/or use of email during breaks and before/after hours. May also include a reminder that there is no promise of privacy with such use.

Conflicts of Interest

Prohibition of any action that might constitute or create the perception of one's personal interests being in conflict with their duties and responsibilities on behalf of the organization. (Gifts and Gratuities, Entertainment and other such provisions may be subsets of Conflicts of Interest)

Contracting/Procurement

A variation on Conflicts of Interest with the same prohibition against allowing real, potential and/or perceived personal gain to influence decisions made on behalf of the organization.

Discrimination in the Workplace

Typically, a strict prohibition against any form of discrimination based on any factor other than demonstrated ability (e.g., in hiring) or objective job performance (in salary and advancement decisions).

Drug and Alcohol Abuse

Thus usually is a brief restatement of the organization's policies regarding the presence, use or affects of drugs and/or alcohol in the workplace

Employee Right to Privacy

Addresses several issues such as management's right to observe work (directly and/or remotely) for quality assurance, surveillance in the workplace (e.g., for safety or theft reduction) and the organization's right to monitor email and internet usage. Constitutes "fair warning" that one's right to privacy at work may be limited.

Employee Theft

Usually, a reminder that theft (of company property, information and/or time) is unacceptable and may be sufficient cause for immediate disciplinary action, including dismissal.

Employee Volunteer Activity

This provision may address encouragement for employees to be involved in volunteer activities as well as limitations, such as not doing so on company time or using company resources such as copiers or office supplies). Increasingly this provision addresses protecting the organization's reputation. It may prohibit representing one's personal volunteerism as being done on behalf of the company such as by wearing a shirt or cap with the organization's logo to a political rally – thus implying that the organization supports the "cause".

Fair Competitive Practices

A variation on anti-trust – this provision may go further than anti-trust law, prohibiting, for example, promises of product performance or service quality that might suggest a competitive difference when no such difference exists. It may also cover advertising and other competitive practices not addressed in law.

False or Misleading Advertising

This is an "honesty" provision and says what the title suggests. It prohibits advertising that could reasonably be expected to create false or unwarranted perceptions in an effort to influence a buyer's decision.

Fraud

Another honesty provision – with broad implications regarding the requirement that communication on behalf of the organization not be misleading, false or deceptive in any way.

Gathering Information about Competitors

This provision typically attempts to detail standards as to what information an employee or agent of the organization is permitted to gather and share within the organization. Some of its conditions may be covered in law – e.g., anti-trust prohibitions against the sharing of price lists. Others may deal with customer's efforts to communicate competitor information, as in an effort to get one company to match or beat another's prices.

General Rules of Employee Conduct

This is often a “blanket” statement early in the Provisions restating that nothing in this Code overrides existing policy and that as a general standard all employees are expected to abide by all existing rules at all times. It may refer employees to the “Employee Manual,” “Policy Guide” or other such document where such standards are found.

Gifts, Gratuities and Entertainment

This Provision is often a sub-set of Conflict of Interest, prohibiting (or limiting) the giving and/or receiving of gifts and gratuities of any significant value based on the concern that such gifts could influence one’s decision – and not always be in the organization’s best interest.

Insider Trading

Often a legal compliance concern, this provision prohibits the inappropriate gathering or use of “non-public” information for one’s own benefit. The provision is typically reinforced by footnoted policy or regulation where terms are defined and scope detailed (e.g. the notion that “personal benefit” extends to friends, family and others that might benefit even if the individual employee does not).

Political Contributions/Activities

As is the case in “Employee Volunteer Activity” the concern here is that such activities not take place on the organization’s time or property without permission and that the individual’s rights to participate in such activity not be exercised in a manner that suggests the organization supports (or does not support) the position or cause unless authorized to do so.

Protecting Company Proprietary Information

This is a special case of protecting/preserving organizational assets – namely information. The provision may list certain assets (e.g., employee data, customer lists, intellectual property like copyrighted/patented ideas) as well as reference applicable policy and law for more details

Proper Use of Company Assets

Company assets include both tangible assets (property and information) and intangibles, such as reputation. This Provision reminds employees that such assets are available for specific reasons and are to be used accordingly.

Proper Use of Power/Authority

Increasingly, in organization where a “participative, collaborative, non-threatening or non-hostile” working environment is desired we are seeing Code language restricting the use of “organizational power and authority”. The restriction usually attempts to define limits such as the use of abusive or demeaning language and requiring employees to perform personal favors that are not legitimately part of their job responsibilities. (One recent US example, a supervisor “invited” his employees to paint his house one weekend. He would provide food, drink, paint and brushes. He never accepted that employees felt

pressured to give up their free time to do this – that it was an inappropriate use of his power).

Protecting the Company's Reputation

This a specific case of protecting organizational assets, specifically the intangible asset of reputation, and can be related to Volunteerism and Political activity, as well as any other action that could harm the reputation – e.g., falsifying (or failing to generate reliable) research data and creating an future embarrassment for an R&D company.

Protecting the Environment

This provision is increasingly (with safety and health) included in statements of public commitment (including but not limited to the Code) as part of the organization's priorities. Depending on industry, this may be a central consideration (e.g., oil exploration and mining) or peripheral (e.g., financial or academic institution).

Protection of Employee Health and Safety

As is the case with environmental protection, the prominence of this Provision may be a function of the organization's role and visibility. Most organizations are making this expectation explicit in their Code, even if only by a mention along with other, related "social consciousness" issues. mention

Protecting Employee Information

As a corollary to protecting organizational information, many organizations address their obligation to protect employee information. This may be driven by law (and reinforced in the Code by reference in a footnote). Typically is addresses "private" information the company has accrued that it promises not to share.

Protecting Employee Rights

Employee information (above) is one right that is frequently made explicit in Codes. Some organizations prefer (either instead of or or conjunction with the above) to include the broader statement that they and their employees will ensure that all rights of their employees will be protected.

Relations with Vendors/Suppliers

In this Provision "relations" ca have multiple meanings. It can refer to a prohibition on doing business with family members (nepotism) as well as defining what constitutes proper or improper relationships with vendors – the giving and/or receiving of gifts, gratuities and entertainment. A third arena can address issues such as promises of future benefits (e.g., future employment) is exchange for assistance in a current initiative (e.g. a bid for a certain piece of work).

Sexual Harassment

Certain employee rights and organizational responsibilities are singled out for specific attention. It may be the organization has (or fears) certain situations or, it may be a

general reflection of what society is paying attention to. In either case, issues such as diversity, discrimination, harassment and sexual harassment are “current” and increasingly specified in Codes.

Quality Control

Since the 1970s , when Total Quality Management (TQM) gained prominence, product quality, and more recently “service quality”, have be featured as “values” and /or “strategic commitments” in many organizations. In these organizations it is reasonable that Quality would also be a Code issue.

The Organizing Principle for the Provisions

Once selected, the Provisions are best organized according to some principle or logic.

One principle is to arrange the Provisions according to their primary focus – legal compliance or support for core values. The within that broad division arrange them randomly or alphabetically. We recommend that organizations NOT attempt to prioritize the Code provisions as to their importance since that varies based on the nature of the issue/situation being faced.

Another such principle that is increasingly being used is to arrange the Code provisions according to which value they most generally support. A simple example, from the table of contents of a recently developed Code for the staff of a non-profit association:

Excellence

- Maintaining professional competence
- Providing quality service
- Being open to innovation and new ideas
- Complying with all applicable laws, regulations, policy and procedures

Integrity

- Being honest, open and forthright
- Protecting and maintaining confidentiality
- Avoiding conflicts of interest

Respect

- Treating others as you wish to be treated
- Collaborating and sharing ideas
- Embracing diversity
- Maintaining a respectful workplace free from harassment
- Showing concern for company property and the personal property of others

Accountability

- Taking personal responsibility for one’s actions and decisions

- Managing personnel and resources to meet the organization’s goals while protecting the environment
- Placing organization success above self-interest
- Accepting and providing appropriate professional evaluations/reviews

As you review the above you will also most likely intuit several of the issues and concerns exposed during the organizational assessment and subsequently addressed in the Code – the unique expressions of the values as they related to the current “culture and the desired future state.

The key to the organizing principle you select is that it has some logic or rationale that will make the Code most helpful to the users. The length of the document, level of detail and sophistication of the typical reader are all considerations. There is no “best” or “correct” answer. There are several alternatives and you should select the one that you think will be most useful to your organizations and those covered by the Code.

The Final Content Elements

Code support systems and structures

The development of a Code ought not take place in an organizational vacuum. The Code is not a “stand alone” document. It exists in context that typically includes, as a minimum:

- A communications strategy
- A training strategy
 - Code awareness
 - How ethical decision are made – ethical reasoning
- A guidance mechanism
 - Where to seek authoritative interpretation of the Code
- A reporting mechanism
 - Where to report suspected or observed misconduct
 - What happens when such a report is filed
 - What protections are afforded to persons making such a report

Given the need for these supporting systems it can be appropriate to refer to them within the body of the Code.

Ethical decision-making process

Frequently we see codes suggest that it is the individual’s responsibility to make ethical decisions that uphold the letter and spirit of the Code.

Any number of decision making guides are provided – usually in the form of “test” questions – questions the decision maker can ask him/herself to be sure they are:

- confident that the option they are considering meets organizational standards; and
- comfortable that it meets their own sense of what is right, good and just.

One set of sample questions, use by the Ethics Resource Center¹ in several Codes they help crafty includes:

- Is this option consistent with law and regulation?
- Is this option consistent with organizational policy and procedure?
- Is this option consistent with this organizations stated values and expectations?
- Is this option consistent with my personal values, my sense of right, good and just?
- If made public, would society, at large, view it to be ethical?

There are any number of other “test questions” in common use, including:

- Would I want my decisions (and my reasons for making it) to appear in the newspaper as tomorrow’s headline
- Would my mother be proud of me for choosing this option?
- Would I advise my child to make this same choice?

A personal favorite, based on the notion that one’s pet dog is a source of “unconditional love” – would my dog still love me if he knew about this?

Creating Guidance and Reporting Systems

Seeking Guidance

It is understood that the Code does not stand alone. Sometimes people need to know how the Code applies to a unique set of circumstances – where the Code is subject to interpretation and different opinions and where the decision maker needs an “authoritative” interpretation.

The goals is for the decision maker not to be at risk if they do what they are told is the right thing to do. The Codes typically encourage employees to ask for guidance if they are uncertain.

The Code should advise:

- Who is authorized to interpret the code in such cases
- How that person may be contacted
- What protections are afforded the employee for asking the question – an assurance that asking is the preferred course – certainly better than guessing.

Codes typically offer a series of resources with advise to choose whichever seems most “comfortable” and least threatening.

Choices may include:

- One’s immediate supervisor/superior
- One’s “skip-level” supervisor – (the boss’ boss)
- The ethics officer or ethics office
- Any member of the Ethics Committee/Council (assuming such a body exists)

Reporting Misconduct

Similarly, employees are typically required by the Code to report unethical conduct they suspect or observe. There are several; culturally-specific variations on this issue. (For example, “reporting” does is not well received in the former Soviet Union, France or Germany.)

In this instance the Code is more likely to require than advse the employee to report. The Code, again, will usually detail:

- Who is authorized to be contacted in such cases
- How that person may be contacted
- What protections are afforded the employee for raising this issue – what formal “whistleblower” assurances the company makes.
- Caller options – e.g., an anonymous “tip” versus a formal “report”
- A brief overview of what happens after the call is made, e.g.:
 - The presumption of “due process”
 - The presumption of innocence until proven guilty
 - Independent investigation
 - Confidentiality within legal limits
 - Possible need to reconnect with the caller and options for doing so

Naturally, all this presumes the appropriate systems and structures are in place and functioning within the organization.

Statement of Personal Responsibility

It is becoming more common for organizations to presume that employees have an affirmative obligation to report suspected or observed misconduct. Typically this is presented in the Code as a statement such as:

“All employees of XYZ Corporation have an affirmative obligation to report any suspected or observed violation of law, policy, procedure or the Provisions outlined in this Code of Ethics. Failure to do so constitutes a violation of the Code and is itself punishable, up to and including dismissal.”