

## Austin Area Chapter Association of Certified Fraud Examiners

### Update on Chapter Activities

Our November 7, 2011 Chapter meeting continues with the second part of Mr. Dan Hargrove's presentation on Ethics.

We will be holding our annual fall (full day) conference on Wednesday, December 7 at Catfish Parlour. Our Chapter Vice President, Mr. Andy Prough, is in the process of finalizing our agenda and speakers. The names of the speakers will be posted soon. There will be no regular December luncheon meeting. We look forward to your attendance.

Part of our mission as a Chapter of the ACFE is to provide community service. This year the Chapter has a Community Service Committee and one of first projects is to accept donations for victims of the Bastrop fires. We are asking for additional help from our members. We will take up a collection at the November meeting. You may donate by cash, [on the website by pay pal](#) or send a check to the Chapter at the mailing address. Make the checks to the Austin Area Chapter of ACFE. Our Treasurer will send a check in the name of the Chapter after the November meeting. Thank you for your consideration for this worthy cause.

The Chapter is also planning on providing Chapter Scholarships. This year the Chapter Scholarship will be a separate application from the ACFE Headquarters application and will be used only for our Chapter Scholarships. You may use the Chapter Scholarship application currently online at our website even if it has last year's date (we are working on getting this updated). Please send scholarship application to the chapter address or e-mail link on the home section of our Chapter Website <http://www.austinacfe.com/index.htm>. Our Chapter continues to grow and currently has over 80 paid chapter members for 2012 fiscal year. If you are not yet a Chapter Member please contact our Chapter Treasurer, Mr. David Heater or see membership application on the Chapter's website <http://www.austinacfe.com/>.

The board wishes everyone a Happy Holiday season!

### Chapter Meeting Schedule

**Time:** 12:00 p.m. to 1:00 p.m.

**Location:** Catfish Parlour  
4705 E Ben White Blvd

**Cost:** Luncheon Only:  
Members and Non-members \$12.00

**Date:** November 7, 2011

**Speaker:** Attorney Dan Hargrove

**Topic:** Ethical and Legal Considerations in  
Fraud Examinations (Continuation from  
October 3<sup>rd</sup>).

**register on line: [www.austinacfe.com](http://www.austinacfe.com)  
or**

**call 512-923-8656**

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## October What You Missed

**By Mike Garner, CFE, CIA**

If you were not able to attend the October 3, 2011 Chapter meeting you missed part one of a presentation on "Ethical and Legal Considerations for Fraud Examiners" by Mr. Dan Hargrove, Attorney with Hargrove & Rea, P.C. in San Antonio, Texas. Mr. Hargrove is a trial attorney who represents businesses and individuals in civil and criminal litigation, including claims against the government, whistleblower actions, and general litigation. Mr. Hargrove has extensive experience with labor and employment issues, the False Claims Act (whistleblower and qui tam litigation), and the Federal Tort Claims Act. In addition, he has prosecuted individuals for homicide, rape, involuntary manslaughter, child sex abuse, and complex fraud cases. Mr. Hargrove served for five years on active duty with the US Army JAG Corps (10th Mountain Division [Light Infantry] and the 82d Airborne Division) and he continues to serve in the reserves. In addition to Mr. Hargrove, the Chapter's Vice President Mr. Andy Prough prepared the slides and assisted during the presentation.

This first part of the two part presentation on Ethics focused on the basic elements of ethics and then examples of what can happen when they are not being followed. Mr. Prough briefly discussed Anderson's complicity with Enron related integrity issues resulting in ethics and integrity issues for the audit profession as a whole. There is general agreement that the reputation of the accounting and auditing profession has been damaged as a result of high profile scandals. Ultimately the actions of a few hurt the reputation and integrity of the entire profession from which they are still trying to recover.

**Ethics** – There are usually three elements that are traditionally mentioned in the definition of ethics including reflective choice (decision-making); standards of right and wrong (moral principles); and concern with values (the "greatest good"). The right choice is not always clear. To make the ethical choice you need to know the difference between right and wrong but knowing that difference is sometime the most difficult part of the decision. Values are personal because they are learned and internalized through many different influences (family; social status; peer groups; and ethnic culture) and at any specific time or place, some values are more widely held than others. Do we make a decision that is for the greatest good or do we make a decision that better conforms to moral rules and principles?

**Purpose of Ethics** - One of the main purposes of ethics is to direct our actions to better conform to some societal norms or to a written code of ethics, such as the Certified Fraud Examiners Code of Professional Ethics.

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AUSTIN AREA CHAPTER OF  
THE ASSOCIATION OF CERTIFIED FRAUD EXAMINERS  
PO Box 13462, AUSTIN, TEXAS 78711

### BOARD & COMMITTEE MEMBERS

FISCAL YEAR 2011

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The ACFE's Code of Professional Ethics consists of 8 items, but the presentation focused on the second item, which says: "A Certified Fraud Examiner shall not engage in any illegal or unethical conduct, or any activity which would constitute a conflict of interest." This rule is a composite of three prohibitions -- illegal conduct, unethical conduct and conflict of interest.

**Conflicts of Interest** - The taking of an interest by an agent in a transaction that is actually or potentially adverse to the principal without full and timely disclosure to, and approval by, the principal. In the Code of Federal Regulations 5 C.F.R. Part 2635 states as follows: "Standards of ethical conduct for employees of the executive branch". Prohibited conduct includes: Subpart B – Gifts from Outside Sources; The term "gift" is defined to include nearly anything of market value; from a prohibited source; or given because of the employee's official position and includes accepting gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain.

Mr. Prough briefly discussed an example from the Federal Regulation in which a purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Due to his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in §2635.204(a) on de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

**Case Example** - Mr. Prough and Mr. Hargrove then went through one of Mr. Hargrove's cases that had been reported this past summer in the San Antonio Express. The example case showed that a conflict will still exist even if the payments are made through a third party if the intention was to secure business.

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In this case the Army was probing payments made as honoraria by the Danish pharmaceutical firm Novo Nordisk through organizations such as the T.R.U.E. Research Foundation to physicians at Fort Sam Houston's Institute of Surgical Research (ISR). In the settlement with Novo Nordisk the Justice Department said that the company targeted influential Army doctors at ISR to use, market, and promote the costly drug NovoSeven to slow bleeding in wounded soldiers even though it may not save lives and was risky. A physician and former chief of anesthesiology at the ISR was the whistleblower along with another whistleblower from the pharmaceutical firm.

**To be continued November 7, 2011**

## Speaker's Biography

**Dan Hargrove**

**Attorney with Hargrove & Rea, P.C.  
San Antonio, Texas**

Dan L. Hargrove is a trial attorney who represents businesses and individuals in civil and criminal litigation, including claims against the government, whistleblower actions, and general litigation. Mr. Hargrove has extensive experience with labor and employment issues, the False Claims Act (whistleblower and qui tam litigation), and the Federal Tort Claims Act. In addition, he has prosecuted individuals for homicide, rape, involuntary manslaughter, child sex abuse, and complex fraud cases. Before joining Hargrove & Rea, P.C., Mr. Hargrove practiced in the San Antonio office of Jenkins & Gilchrist, P.C. and served for five years on active duty with the US Army JAG Corps (10th Mountain Division [Light Infantry] and the 82d Airborne Division). He continues to serve in the reserves.

### **EDUCATION**

The University of the Virginia School of Law and Army JAG School, LL.M. 2003

St. Mary's University School of Law, J.D. 1994

## September What You Missed

**By Mike Garner, CFE, CIA**

If you were not able to attend the September 12, 2011 Chapter meeting you missed a presentation on "Characterization and Tracing for Divorce in Texas" by Mr. John Knox, CPA, PC. Mr. Knox is a member of Austin Chapter's Board of Directors and is in private practice assisting clients in accounting compliance, business valuation, and fraud risk. Mr. Knox's presentation discussion focused on the characterization of marital property; the importance of these characterizations as it relates to divorce proceedings; and various methods used for tracing.

Mr. Knox started his presentation with a quote from Jeff Foxworthy "If mama ain't happy, nobody is happy, and if mama ain't happy long enough, then you'll be unhappy with half your stuff." Texas is a community property state and all property owned or possessed by the two parties in the marriage is presumed to be community property unless it can be proved to be separate property. The starting point in developing a case where the division of property is contested is the task of establishing the nature of the property to be divided as either separate property or community property. There are only three categories of marital property wife's separate property; husband's separate property, and community property.

Separate property consists of property owned or claimed by the spouse before marriage; and any property acquired by the spouse during marriage by gift, devise, or descent. Mixed property has characteristics of both and must be separated into separate and community.

Tracing can be used where accounts have been comingled to establish the separate character of the property. Tracing methods include: matching transactions (similar transactions transferring similar value); mutation or exchange principal (trade a Picasso painting for a car, etc.); minimum sum balance method; and line item or value tracing method (analysis through spreadsheet programs such as Excel).

Community funds are presumed to be drawn out first in settling debts and expenses leaving the separate funds. Mr. Knox provided examples of line item tracing in areas of both "community property out first" and "investments."

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*September What You Missed, continued from previous column*

The minimum sum balance approach is used when there has been a comingling of community and separate funds in an account and it can be established that the account balance never dipped below a certain level (\$10,000 CD is owned by a spouse and the account never dips below that amount the spouse claims the \$10,000 CD). Mr. Knox closed by answering a number of forensic accounting questions.



# *The Spotlight's On You!*

A special feature focusing on members of the Austin Area Chapter of ACFEs

*A special feature focusing on members of the  
Austin Area Chapter of ACFEs*

**Gilbert Mokry** has been a member of the Chapter for the past **3** years.

*But maybe you didn't know...*

**Job Description:**

Internal Auditor for TX Water Development Board

**What I'm working on now:**

Compliance audit (can't tell you any more or I would have to kill you)

**Best part of my job:**

Interacting with the people of the agency I work for, learning new things.

**Ambition and/or Goals:**

Just completed one goal – I passed the final part of the Certified Internal Auditor exams. Therefore I am now a "CIA" as well as a CPA and CFE.

**Years in audit field/ with State:**

Worked as an accountant in 1980; as an auditor since 1989; with the State since 1993

**My first job:**

Full-time? Accountant for a manufacturing company outside Manor.  
Part-time? Working on family farm in middle school.

**Hobbies:**

Reading, grilling, cooking, watching sports

**Favorite Movie:**

Too many to name. Westerns (almost any John Wayne movie is a good bet); also comedies like early Mel Brooks (Young Frankenstein), science fiction, etc.

**Last books I read:**

Gleim CIA Review (Ugh!)

**Favorite foods:**

Tex-Mex, BBQ, steak

**Favorite Restaurants:**

Chuys, Saltgrass, Springhill Catfish (my favorite BBQ is my own, not a restaurant's)

**My pet(s):**

None. (But I do have two kids (now adult). Do they count?)

**It's a good day when:**

I have helped someone with their job.

**Pet Peeves:**

Cannot stand liars, idiot drivers (I have a long commute to work every day); pretentious people

**What I would do with a surprise afternoon off:**

Do something outside. Take a walk, go for a drive, maybe grill something ☺

**I'm most proud of:**

My family, especially my kids. One daughter is a CPA and the other is an actuary (beauty and brains both from my wife).

**Most people probably don't realize:**

I was born, raised, and still live, in Taylor (see comment about commute above).