

## Clearing the Ethical Air

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Ethics. It's a topic that is hard to grapple with sometimes – kind of like wrestling with Jell-O. But we all know what is ethical and unethical, don't we? Well, maybe not, as the ACF staff, ACF leadership, and the Ethics Committee have received a fair number of requests for clarification on certain topics. Many of those requests have centered around potential conflicts of interest and on referral fees. In this article, we will seek to clear up the uncertainty surrounding these topics.

Fortunately, ACF has a very strong and concise [Code of Ethics](#). The national Ethics Committee conducted a very thorough review of the Code over many months in 2017, and out of that review came recommendations to the Board of Directors to amend the Code of Ethics. As part of that process, Ethics Committee Chair, Glen Worrell, led a special session at the ACF National Conference in Wheeling, West Virginia to answer questions and get input from members on possible changes. Ultimately, a revised Code of Ethics was offered to and voted on by the ACF members and passed, giving us a new Code.

Questions have arisen recently about the receipt of referral fees. Some members seem to be confused as to whether it is acceptable to receive a referral fee, but they shouldn't be. Referral fees are clearly forbidden in Canon 15 of the Code of Ethics: "It is unethical for an ACF Consulting Forester to pay or claim a fee or commission for the purpose of obtaining or referring employment." For forestry related work, it doesn't matter whether the referral fees are for a timber sale, a hunting lease, client carbon credits, or any other type of work, it is not allowed under ACF's Code of Ethics. ACF members should negotiate fair compensation with their clients, with whom there is a fiduciary responsibility.

Some ACF members also hold real estate licenses, and referrals are a universally accepted and legal practice in the world of real estate. Real estate is an integrated business of sellers and buyers being serviced by a network of agents who are generally not tied together. In real estate sales, the referral is transaction based, and the referring agent is paid by the listing agent to bring a buyer and seller together for that specific transaction. A long-term relationship or future transactions are generally not at stake, as is often the case with a forestry-related referral.

Some may think that Canon 11 allows exceptions to referral fees if all parties agree and there is full disclosure. But that's not the case. Canon 11 refers to a specific situation in which the ACF forester is asked to perform the same service for multiple clients. An example of this is a situation I faced many years ago when one of my clients was negotiating the sale of tract of timberland to another one of my clients. Both asked me to cruise and appraise the timber for them. The situation was remedied by both clients agreeing to hire me, accept the results of my cruise, and split the fee. That arrangement, of course, was agreed to in writing by both parties.

Other questions have arisen about conflicts of interest and what constitutes a conflict. Actually, our Code in Canon 10, not only forbids conflicts of interest but "even an appearance of such conflicts." In other words, as one of the members of our Ethics Committee stated, "If it smells bad, don't do it." The reason for avoiding conflicts of interest or the appearance of such is that it can cloud the judgement of the forester and it looks bad to the public. The latter reason might be the most important. As ACF foresters, we are supposed to hold ourselves to a higher standard, and that includes making sure

everything is not only done above board but is also looks that way. Also, clients are trusting us, and any appearance of a conflict of interest erodes that trust.

Admittedly, ethical questions can sometimes be murky, and this where we can lean on each other. For years, Georgia's Board of Registration for foresters required at least one hour (CFE) of ethics for renewing a license, and at our ACF meetings we had some great discussions centered around case studies or actual situations that members had faced. Unfortunately, Georgia dropped that requirement and ACF does not require it, although some states apparently still do. So ethical discussions do not take place as much as they used to – at least not in our neck of the woods. As to whether something is unethical or not, I am reminded of a line from a forester who when asked what a swamp is said, "I can't describe a swamp, but I know when I'm standing in one!"

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