

I Quit . . . Again

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ABSTRACT

Ethical dilemmas are not always of our making. Carol, a licensed CPA, finds herself in the middle of a scheme concocted by two employees of her firm to defraud the U.S. government. Carol must negotiate both a legal and ethical tightrope. Her choice to do the ethically correct thing could lead to her dismissal or other retaliation by her boss. The case could be used in the following undergraduate or graduate courses: accounting, business law, business ethics, human resources.

Keywords: Ethics, accounting, fraud, collusion, case, CPA, legal

INTRODUCTION

It was a beautiful December day: cold, but not frigid. The sun was shining. It wasn't windy. In fact, it would be a great day to go skiing or take the kids sledding. I am certain that is what everyone else was doing on their day off – skiing, sledding, something fun, or maybe nothing at all. They were probably just sitting at home by a nice warm fire reading a book, watching TV, napping. Everyone that is, but me.

As Business Manager of a Private Care Organization I was in charge of overseeing the asbestos abatement project at work. In case you don't know what that means, an asbestos abatement project is when an organization removes asbestos or asbestos-containing material. There are all sorts of regulations in doing this and the extent of the oversight depends on the amount and type of asbestos. Needless to say, this was a big project and was taking lots of my time and energy. But that's not all I was spending my time on. As Business Manager I am in charge of general building items, staff scheduling, and all accounting duties including billing, purchasing, budgeting and payroll. My background as a CPA has proven to be very useful in this job.

I had spent many months meeting with inspectors and abatement contractors learning the difference between friable and non-friable materials¹ as well as planning and coordinating the project. I should probably note that the Building and Grounds Committee had since disbanded and their duties were effectively transferred to me. There were many late meetings with the Finance Board and Board of Trustees discussing details and obtaining approvals. But overall, things had gone fairly smoothly.

I hired a Certified Asbestos Contractor at a reasonable price, coordinated the abatement dates with the air quality inspector, and ensured that the lab would be available to test the air samples. I confirmed that all members were properly licensed and all procedures would be well documented. Finally, to ensure worker and client safety, I scheduled this project to take place over the Christmas holidays when the office was closed. Closed that is, for everyone but me.

In reality, I didn't really need to be present for the entire project. The abatement contractor was given a key to the building. I was required to "check in" with them, and if everything was in order I would not be required to stay. They were provided with my phone numbers in case of an emergency. Arrangements were made for a follow

¹ Non-friable is asbestos containing material that has not crumbled, been pulverized, or otherwise deteriorated so that it is no longer bound with its matrix. When asbestos containing material breaks apart, crumbles, or otherwise deteriorates to a point at which dust particles can be produced from the material when hand pressure is applied, the material is then deemed friable.

up inspection of their work. And there would be no payment until the key was returned, the work was complete, and the proper documentation was filed. So as I went to work on this beautiful December day I assured myself that this was going to be a quick trip to the office. I was determined to go in, do my job, and not breathe deeply.

THE ISSUE ARISES

Upon arrival, things appeared to be moving along according to plan. I met with the abatement contractor who briefed me on their progress. We quickly went over a few details. The strong chemical smell in the air was definitely disconcerting. I was concerned that the smell would still be lingering when the employees returned to work. As we were discussing this it became apparent that in all of my planning for this day I had forgotten to shut off the fire alarm system – which started going off!

As I learned at that moment, the alarm system is sensitive to the chemicals being used to strip the asbestos glue from under the floor tiles in the basement. Naturally, this is also the section of the basement where the fire alarm system is located and where the main switch is located to shut down the system and cancel the alarms. The password and alarm company phone numbers are in that room as well. I stood on the other side of the sealed basement area with the sirens blaring, lights flashing, and fire doors automatically closing, trying to yell instructions to the abatement team on the other side of the now-locked door on how to silence the alarms and shut down the system. No success. The fire trucks were on their way.

I raced up the stairs to my second floor office, looked up the alarm company number, and picked up the phone. Line one was dead, and so was line two. Line three was ringing, so I picked it up quickly.

“Hello, this is Carol; how can I help you?” I said in a rushed tone of voice.

“Hi, Carol. This is Judy. I thought you might be there today.” Judy had been a janitor with our company at one time. She sounded like she wasn’t in any hurry at all to finish this conversation.

“Yeah, Judy. Say, there’s a big project going on today and I’m in a mess. I’m the only staff person here. What can I do for you?”

“What is that noise?” Judy asked.

“Fire alarms! We have contractors here doing asbestos work and they have set off the fire alarms and shorted out two of our phone lines. In fact, I have to call the alarm company to shut down the system and try and call the fire department to call off the fire trucks. Are you at home? Can I call you right back?” I know I sounded exasperated.

“I’ll be quick,” Judy said. “I’m just calling to let you know I am giving my two weeks’ notice. My last week of work will be the week of January 5th. With school and all I just don’t have time to continue to clean for you. I wanted to make sure you had enough time to look for someone else. I also have some supplies that I need to be reimbursed for. I put the receipt with the time cards.”

“Okay. Well, thanks Judy, for letting me know. I will make sure and let Linda know so she can post your position. I apologize for cutting this short, but I really have to run and try to catch the fire truck. Thanks for calling.” I quickly hung up and started to dial the alarm company.

Suddenly the alarms stopped. They must have found the silence button. Now I could hear the fire trucks coming up the street. My mind raced as I ran down the stairs and outside into the cold air to meet the fire department. Wait! What had just happened here? Had Judy just called and said she quit? How could she do that when she didn’t even work for us? If I remembered correctly, she had quit the janitor position in November and suggested we hire her boyfriend, Carl, as her replacement. I didn’t recall rehiring her. How can someone quit a job in November and then turn around and quit it again a month later?

During my quick chat with the fire department, I learned that this was their second trip of the day, the first of which took place before my arrival. Now with all that done, I could give some thought to what was going on with Judy.

A quick check of the computer payroll records confirmed that Judy went off the payroll in late November. A man by the name of Carl was added to payroll in late November as support staff or janitorial services. I checked the personnel notes on the computer system; nothing had been added to Judy's or Carl's files. I could not imagine why Judy would be calling to quit. We already knew she quit. What was that she said about reimbursements? And why would she be buying supplies for our company when she wasn't even on the payroll anymore?

Judy and I had known each other for a few years. In fact, I had helped her obtain the job. She had held several part-time positions with us, the last being the janitor position. Several Board members had gotten to know Judy as well. They had employed her to house sit, baby-sit, and even dog-sit for them. She was always on time and did a great job. We had offered her several full-time positions, but with college she felt the full-time positions would be too much. She was one of the most honest, trustworthy people I know. That is why I was sure this could be cleared up with a simple phone call.

So I called Judy. "Hello" she answered.

"Hi. Is this Judy?" I asked. I heard a mumbled yes. "This is Carol. I am just calling back to clarify some things with you from our conversation earlier."

"Yeah, you sounded really busy. Did everything work out?"

"For the most part. The Fire Department left, but the abatement is still going on," I answered. "Judy, when you called you said you were giving your two week notice. Is that right?"

"Yes, I thought that I could do the janitor position and still go to school, but I really can't."

"Pardon me, but I am a little confused. Didn't you already quit in November?"

"Yes, . . . well . . . I am giving notice for Carl." Judy's tone changed. She sounded almost surprised by my question.

"What?"

"I am giving two weeks' notice for Carl. He won't be able to do this position any longer."

"Judy, you can't give notice for someone else. If Carl wants to quit he needs to call and do that himself."

"Well, I am calling for him because I know you and he really doesn't know anyone there. He has never met anyone there. So he's not comfortable calling and talking to anyone."

"It doesn't matter. It is his job. I can't post his job unless I hear from him that he is quitting. I know you probably helped him get the job, but still, you just can't call and quit his job for him. Besides, when he was hired he had to have talked to Linda to get his paper work, so if he wants to call Linda to quit since he knows her, that's fine. Or he can simply write a note and mail it to us. But either way he has to do it himself, not you."

I should note that as General Manager, Linda is responsible for hiring, training, and conducting annual reviews of the floor staff. She is responsible for ensuring staff meets the mandatory annual CPE hours, and filing the proper federal and state staffing forms. Linda also solicits new clients and works with local businesses to promote the organization throughout the community. Oh, and she's also my boss.

“He’s never met anyone there, not even Linda,” Judy replied. “He’s not going to call. I really don’t want to get him involved with this.” Judy was definitely sounding frustrated. “When I made the arrangement with Linda in November I didn’t think he would have to call when it was time to quit.”

“Arrangement! What are you talking about?” I was getting irritated. “What did you and Linda work out?”

Judy went on to explain how in November she met with Linda and told her of her “financial situation.” Judy was attending college and working part-time which allowed her to live in a subsidized apartment building. Her monthly rent amount was set according to her income. She let Linda know it would be “nice” if she did not have any more income in “her” name for the remainder of the year. If her income could be paid to her boyfriend, who does not live with her, then her rent would go down and that would help her out financially. She also told Linda that she would continue to come in and do all the same work she was doing in the past as if nothing had changed. Linda told her this would work out well. Then Linda handed her an employment package containing the new hire forms for Carl to fill out.

I informed Judy that if what she was saying was true, we could have a serious problem on our hands. I would get back to her. First I needed to see if Judy’s story was true.

In the broadest sense, fraud is defined as “deception deliberately practiced in order to secure unfair or unlawful gain” (American Heritage). Collusion, on the other hand, “is a secret agreement or cooperation especially for an illegal or deceitful purpose” (Merriam-Webster). The combination of collusion and fraud are often difficult to detect, but very damaging legally. If what Judy was saying was true there was a lot more at stake here than just needing to hire a new janitor.

I simply couldn’t believe what I was hearing. Judy and Linda had made an agreement to divert earnings from Judy to Carl to lower her rent. That is fraud. Linda, Judy, and possibly Carl, were in on it together making it collusion.

Like I said earlier, Linda is in charge of staff, clients, and promotions. Hiring and firing is done through Linda. Personnel reviews are done through Linda. Linda should have known better. Did this mean that we hired Carl without even meeting him and interviewing him? If she gave Judy the new hire package which contains the forms W-2, I-9, background check, child support declaration and history information, did Carl fill them out or did Judy? I wondered if he even applied for the job. Only one way to find out. I would have to pull the employee files.

As Business Manager, I also administer the health benefits for our company, so I have complete access to the personnel files. I pulled both Judy’s and Carl’s files. The handwriting in both files was definitely different. Carl’s signature was at the bottom of the application as well as the federal forms. By my untrained eye I would say these were done by two different people. Carl filled out his own forms. So Carl was definitely involved.

If Carl filled out all the paper work why not just call and quit himself? Why would Judy call? What about this story with Linda? It still didn’t make sense. I knew I had never personally met Carl, but that didn’t mean he didn’t work here. I had met everyone else, though. In fact, we had mandatory staff meetings monthly. Everyone was informed of this when they were hired, including janitors. The December staff meeting was also the Christmas party. Judy had been there, Carl had not. Apparently Carl thought it was just a Christmas party and did not come because he didn’t know anyone.

But why hadn’t I seen him? I worked all the time. Getting ready for the asbestos abatement project had increased my work load to about 50 hours per week. I had worked late on three out of the last four Tuesday cleaning nights and a couple of Saturdays that month, which were also cleaning days. Now that I thought of it, it was Judy that I had seen on those late nights, not Carl. One evening after a Board meeting I had asked her where Carl was. She had rambled something about Carl running late and meeting him there, thought she would help out. At the time I didn’t think much of it. But now I wondered who our employee was, Judy or Carl?

Simply put, anyone who “performs services for you is your employee if you have the right to control what will be done and how it will be done (irs.gov).”² An employee is defined by the relationship that exists between the employer and employee. Here are some key questions which help determine the type of relationship (see irs.gov):

- Is the worker told what will be done, where and how to do it?
- Does the worker “provide services that are a key aspect of your regular business activity”?
- Is the worker guaranteed a regular wage amount hourly or weekly?
- Did you “engage the worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period”?
- Is the work to be “performed by a specified individual”?

When I looked at the criteria for who qualifies as an employee, I could say we hired Carl, a specific person for a specific job. He was hired at a regular hourly wage for an indefinite length of time, just as Judy was when she was employed in the position. They were told what to clean, when we needed them and what supplies to use. At least Judy was. Could I prove that Carl did the work and Judy didn't?

In the U.S., employees are usually hired under what is commonly called an "at-will" contract. This means that either the employee or the employer can terminate the employment at any time for any reason whatsoever. The key word in this case is “employee.” Did Judy resign in November? Was Carl an employee in December? Is Carl resigning now?

I finished what I could in the office. I checked on the abatement project and decided to go home. After all, it was the holidays and supposedly my day off. But my mind was still racing.

THE CONFRONTATION

Monday morning I was up early. It had been a *long* weekend. Judy and I had known each other for a few years and I was certain that this whole thing had to be some strange misunderstanding. She was a very honest person and I could not imagine her lying about her income to the Housing Authority. Even worse, she knew me. She knew that I would never lie for her. The apartment building she lived in is a federally subsidized building, and they always sent me income verifications for Judy. Third-party verification of income is required by the Housing Authority. The verification forms state right on them the possibility of civil and criminal penalties for filing false information. Persons filing false information can face both fines and/or jail time. The forms require the tenant's signature before HUD can send them to the employer. After Judy quit I was required to complete another one stating that her employment with us had been terminated. The forms required my signature, and state the same disclosure about penalty of law for giving false information. I was certain that this was a misunderstanding, but just to be thorough I thought I would talk to Linda.

“Hi Linda, do you have a minute?” I asked as I entered her office.

“Sure. Come in.”

“When I was in the office for the asbestos abatement project last week, I received a call from Judy,” I casually stated. “She was calling to let me know that she was quitting, giving her two week notice.”

“So we will be looking for a new janitor. That's a shame; she does a really good job,” Linda replied.

² A Common Law employee is anyone who performs services and the employer is able to control what will be done and how it will be done. Employers are responsible to ensure an employee's eligibility for work and to correctly track the time worked by each individual. An employer must withhold and pay all Social Security, Medicare, Federal, and State income taxes due, as well as properly compensate employees for time worked while maintaining accurate payroll records that are in compliance with current federal and state guidelines.

I almost fell off my chair. “Didn’t Judy quit in November?” There was no answer from Linda.

“Judy also said she spoke with you and told you it would be better if she did not have any more income in her name. She lives in subsidized housing and if her income was lower, then her rent would be lower. She asked you to hire her boyfriend, Carl, and pay him instead of her. She would continue to do all the same work, but all income was to be paid to Carl instead of her. Is that right?” I’m sure I was visibly upset.

Even after I said the words, I wasn’t sure I wanted to hear the answer. I had a sinking feeling in my stomach, the one you get right before something goes terribly wrong. But it was too late. I needed to know.

As Business Manager, it was my job to make sure that the accounting and business records were correct. Not just payroll, but FICA, and workers’ compensation too. According to the rules for workers’ compensation in my state: “All employers are required . . . to either purchase workers’ compensation insurance to provide benefits to their employees for work-related injuries or obtain approval from the Minnesota Department of Commerce permitting self-insurance upon proof of the employer’s financial ability to do so [Minnesota Statutes, section 176.181, subdivision 2].” I had recently completed my refresher course in Human Resource and Payroll Taxes and was reminded of the fact that all employees needed to be covered under workers’ compensation. Workers’ compensation has a very literal view of who an employee is. If a person is injured at our place of employment and can fit into the IRS guidelines in any way, they are deemed an employee. If we have not provided coverage for that person, then we, as a company, can be penalized. Currently we were listing Carl as our employee, not Judy.

Linda looked over the top of her glasses and simply stated, “That’s exactly what Judy told me.”

“And you agreed to this?” I was a little more than stunned.

“Yes. I figured it would help her out. I don’t see what the problem is?” Then Linda’s phone rang and she picked up.

I was stunned. I got a sudden flashback from one of the Payroll Taxes refresher course overheads:

The great Greek poet Sophocles introduces us to the problem of individual integrity butting up against the power of the state: No one delights in the bearer of the truth. In our own times, it is the whistleblower who, at great risk to himself, speaks truth to those in power who have betrayed the public trust through neglect or corruption. (“OSC Protects Whistleblowers...” 2005)

Whistleblower? Is that where this was heading? I loved my job (long hours and all). I was just doing my job well. That is what I strive to do. I am a CPA, and this situation just didn’t smell right.

Maybe I should have just told Judy, the former janitor, “Thank you for your time. We appreciate all the work you have done for us. Good luck in the future!” and left it at that. Besides, Judy was part time and there was not a lot of money involved. I should have dropped it. But, I couldn’t. There was something wrong with Judy’s employment. And I knew it.

Linda finished her phone call and looked over at me with a sort of “are you still here” look. I continued. “The problem is that if Judy is doing the work, she is our employee. She is the one who needs to get paid. You can *not* just pay someone else.”

“I still don’t see what the harm is?” Linda said, fiddling with some papers on her desk.

“What you are doing is considered fraud. You are hiding income with the purpose of defrauding the Housing Authority. It’s illegal! Also, Judy is performing work that she is not being paid for. She could come back and have a claim against us later, for unpaid wages. If she gets hurt on the job she is currently not covered under workers’ compensation insurance.” I could feel that I had now slipped into “business mode”. There was no sense of panic, anger, or even frustration. My thoughts were clear: Okay, here’s a problem! What are the steps to resolve it? “We

need to establish who our employee is. Have you met Carl? How do you let him know what needs to be cleaned each week? Please tell me you gave him the required “orientation” when he handed in his paperwork.”

Linda looked shocked by my questions. “I have never met Carl. I have never even talked to him on the phone. When I need something cleaned, I call Judy and tell her. As for Carl's paperwork, it showed up under my door one night. I assume Judy dropped it off. I don't see what the big deal is. She is quitting anyway. If you really have a problem with this, it will be the last time I help someone.”

“Big deal!” “Help someone!” Okay, I admit it. Now I was angry. Our books are audited every year. Every year I am required to disclose to the auditor any fraud by management or sign a declaration stating that I am not aware of any. This year, I would not be able to do that in good conscience. In addition, it was my signature on the HUD income verification stating that Judy was no longer employed here. A statement that was completely false. Also, if our employment records are off, our employment taxes are off. If our records and taxes are off, so are our W-2's. I could let it go, but what if it was discovered? It was my name and my CPA on the line. The State Board of Accountancy is not very friendly about that. According to the State Board of Accountancy, for any action brought under section 326A.08, “. . . evidence of the commission of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct . . . ” A single act – not three strikes and you are in trouble, just one.

The dollar amount of Judy's wages alone might not be material, but if I were to let this go and it was discovered later, the corrected amount, with fines and penalties, might be significant. The state Board could prove that I had knowledge of the fraud and did not resolve it. The state Board would take action on a single act that goes against the code of conduct of Certified Public Accountants in order to preserve the public's trust in the profession. The American Institute of Certified Public Accountants puts it this way:

Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle. Integrity is measured in terms of what is right and just. A member should test decisions and deeds by asking: "Am I doing what a person of integrity would do? Have I retained my integrity?" Integrity requires a member to observe both the form and the spirit of technical and ethical standards; circumvention of those standards constitutes subordination of judgment. (The American Institute of Certified Public Accountants, ET Section 54 - Article III—Integrity)

If I let this go would I be doing what a person of integrity would do? Would I have retained my integrity in this circumstance? Would others continue to respect my integrity in the next circumstance?

“Linda,” I took a deep breath and started again. “The ‘big deal’ is that it is illegal. And it is fraud.”

WHAT NOW?

I went up to my office and thought about what I was going to do next. There are many ways employees misuse their positions for personal gain. Some steal, some ring up false refunds and pocket the money, some charge personal calls to the company account, others falsify time records or milk the clock. (stopemployeetheft.com) Occupational fraud is costing American businesses \$660 billion annually; or the average company 6% of its annual revenues. Approximately 46% of frauds occur in small businesses that employ fewer than 100 people, like ours. Only 20% of companies are able to recover their losses. Forty percent never recover anything at all. The only way a fraud can succeed is with trust. The only way a business can succeed is also with trust. It is this trust and authority that was delegated to Linda on the assumption that she would use her position appropriately and in the best interests of the company. Too much delegation, too much trust, creates an environment in which fraud can thrive. (Source of facts in this paragraph come from acfe.com).

Wrongful acts are not always easy to prove, but this one seemed to have fallen into my lap. Still, it was only hearsay. I didn't have anything in writing. What written proof would there be to either prove or disprove the claims of fraud? . . . Time cards!

Why hadn't I thought of that before? Our time cards were hand written. I flew over to the file cabinet and pulled out the payroll files for November and December. Quickly I flipped through each set and found Judy's time cards from when she had been the janitor and compared them to Carl's time cards. The dates, times, and handwriting were the same! It was Judy's writing on all of them. On one of Carl's time sheets the name line even had a capital J crossed out in front of Carl. On the current timesheets, for the next week's payroll, the name line had Judy written on it with a line through it. Next to it, there was an "oops", a smiley face, and then the name Carl, all in Judy's handwriting.

Now that I had proof to backup what was said, what should I do with it? I knew the law well: "An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee because the employee, in good faith, reports a violation or suspected violation [181.932, Minnesota Statutes 2007]." But I also I knew that this does happen. That is why in 1986, Congress added stiff anti-retaliation protections to the False Claims Act. The law provides relief to employees who have discovered and disclosed things on behalf of their employer and suffered for it. Was I prepared for that?

What was my duty as a CPA? As a CPA, client confidentiality is regarded as essential to our profession and must be maintained. "Communications between accountant and client, and the resulting advice provided, to be privileged in the same manner as that between attorney and client (Lilienthal 2006)." There are exceptions to this rule, as in the case of a subpoena. My client was my employer. The CPA rules are clear that information, even in this case, can't be disclosed "except by permission of the client for whom a licensee performs services . . . licensee shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee (Lilienthal 2006)." Without permission I am not allowed to disclose this information because the Housing Authority was not my employer. A CPA's duty is to their client/employer first. My employer would need to voluntarily waive this right and allow me to disclose the facts of the fraud to the Housing Authority. The HUD form that was signed was signed in good faith. The discovery of fraud does not allow the Housing Authority's right to know to surpass my client/employer's right to confidentiality. Permission would still need to be granted. Linda would never give permission. I would have to convince the Board of Trustees that fraud had been committed by Linda and Judy (both of whom they loved). If I was successful in convincing them about Linda and Judy, next I would need to persuade them to notify the Housing Authority; a statement that could reflect poorly on the company image.

Given all this information, if I was successful in convincing the Board of Trustees, it would still be up to them, at that point, to take action. Few companies dismiss employees immediately, so chances were I would have to live with Linda as my boss after turning her in. Should I should start polishing up my resume?

CASE QUESTIONS

1. Has fraud been committed? Against whom?
2. What consequences could there be for the organization for "dropping" the issue, and not investigating fully Judy's statements about Linda?
3. If Linda is allowed to remain in her position, what is the likelihood that she will harass or terminate Carol?
4. If Carol suffered harassment or was terminated, in this case, could the company be held liable for failing to protect Carol's job after she disclosed the fraud?
5. Should the Housing Authority be told of Judy's income? What if the client, the Board of Trustees, does not give Carol consent to notify the Housing Authority?

6. In this case, Carol has many job responsibilities. Some would even claim she has too many different things to be responsible for. What ethical dilemmas result from extra heavy work loads for employees? What are the costs to a company?
7. If the company in question was a 501(c)(3) non-profit organization which is allowed to use volunteers, would this still be an issue? (Could Judy be reclassified as a volunteer to avoid the employment laws?) Would fraud still have been committed against the Housing Authority (or the company) if this was a non-profit?
8. What should Carol do?

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REFERENCES

1. "An employee's guide to the Minnesota workers' compensation system" Minnesota Department of Labor and Industry, as viewed June 19, 2008 at <http://www.doli.state.mn.us/guide.html#Fraud>.
2. Employment Rights as viewed June 19, 2008 at http://www.factsoflaw.com/employee_rights/employee_rights.htm and [http://www.factsoflaw.com/employee_hiring_and_firing.htm](http://www.factsoflaw.com/employee_rights/employee_hiring_and_firing.htm).
3. "Fraud Survey," (2003), KPMG LLP, as viewed June 19, 2008 at http://www.kpmg.com/aci/docs/Fraud%20Survey_040855_R5.pdf.
4. Gray, Peter and Andrew E. Tanick (2002), "Fresh Incentives to Whistle While You Work: Whistleblower Claims After the Abraham and Anderson-Johanningmeier Cases," Bench and Bar of Minnesota, April, as viewed June 19, 2008 at <http://www2.mnbar.org/benchandbar/2002/apr02/whistleblower.htm>.
5. "Guide to Minnesota Law," As viewed June 19, 2008 at <http://www.weblocator.com/attorney/mn/law/emplawman.html#40>.
6. "Information geared toward employers and employees," Minnesota Department of Labor and Industry, as viewed June 19, 2008 at <http://www.doli.state.mn.us/wcere.html>.
7. Lilienthal, Stephen M (2006), "Tax returns: Confidentiality, not an open door," April 10, as viewed June 19, 2008 at <http://www.enterstageright.com/archive/articles/0406/0406taxreturn.htm>.
8. Merriam-Webster online (2006), as viewed June 19, 2008 at <http://www.m-w.com/dictionary/collusion>
9. "Minnesota Department of Health Fact Sheet: Asbestos Sampling - Inspection and Assessment Minnesota Department of Health" (2005), January, as viewed June 19, 2008 at <http://www.health.state.mn.us/divs/eh/asbestos/factsheets/asbworkpracall.pdf>.

10. Minnesota State Statutes.
11. “OSC protects whistleblowers as they shine light of truth,” (2005), Office of Special Counsel, United States of America, as viewed June 19, 2008 at <http://www.osc.gov/documents/fedarticle1.pdf>.
12. “Preventing Employee Theft and Fraud,” (2006), Funkhouser Vegosen Liebman & Dunn Ltd., February, as viewed June 19, 2008 at <http://www.fvldlaw.com/newsletters/2004-02.htm>
13. “Rent and Income Determination Quality Control Monitoring Guide,” (2003), August, as viewed June 19, 2008 at <http://www.hud.gov/utilities/intercept.cfm?offices/hsg/mfh/rhiip/qcguide.pdf>
14. Report to the Nation on Occupational Fraud and Abuse, Association of Certified Fraud Examiners (2004) as viewed June 19, 2008 at <http://www.acfe.com/documents/2004RttN.pdf>.
15. “StopEmployeeTheft.Com” as viewed June 19, 2008 at <http://www.stopemployeetheft.com/employeetheft3.html>.
16. “The American Heritage® Dictionary of the English Language, Fourth Edition, online” as viewed May 21, 2008 at <http://education.yahoo.com/reference/dictionary/entry/fraud>
17. The American Institute of Certified Public Accountants, ET Section 54 - Article III—Integrity (2006) as viewed June 19, 2008 at http://www.aicpa.org/about/code/et_54.html.
18. Washington State Legislature, Definitions of Asbestos Topics, as viewed June 19, 2008 at <http://apps.leg.wa.gov/WAC/default.aspx?cite=296-65-003>.
19. Whistleblower.com as viewed June 19, 2006 at <http://whistleblowerlaws.com/protection.htm>.

TEACHING NOTES

This is based on an actual situation. Here’s what actually happened from the CPA’s own words:

The Rest Of The Story

This was a nonprofit. I did inform the President of the Board, also a lawyer. He did not practice employment law. Because of his relationship with Judy he felt that he did not want to pursue this. He also did not think it was a “big deal”, but did understand the implications and risks as a CPA . . . I contacted the AICPA for ethical help on how to handle the situation. I followed their direction so as not to increase the risk exposure. They deemed the fraud to be primarily against the Housing Authority and should not be revealed to the Housing Authority without consent from my employer. (This was not given.) They were concerned that with a signed Income Verification I would need a personal lawyer to represent me should fraud charges be filed by HUD. They advised me how to testify if necessary. They also warned me about the Board and what actions I should take based on how the Board chose to deal with Judy, Carl, and Linda.

The Board requested resignations from Judy and Carl effective immediately. They spoke to Linda. But that was it. I cautioned the Board that there had been other minor ‘issues’ in the past, but that was all the action they took. I stayed on and finished out my year end which took several weeks. Then I quit.

Those were some of the worst weeks ever. Linda constantly threatened to fire me, she harassed me, relieved me of job duties, had other staff watch me. She wrote threatening letters to me. She called my home with complaints. Twice the Board stepped in on my behalf and spoke with her. Finally, she sent a person to my other place of employment to speak with my boss and “investigate” me. I quit. I did find a lawyer to represent me under the Whistleblower Act. I had everything well documented and in writing, including the requests to come back to work from the Board. I chose not to.

Linda had told the Board she would retire at the end of the fiscal year, June, so they kept her on until then. Recently, I was contacted by a Board member about a couple of transactions involving Linda since I had left. Linda had produced a fictitious bill “owed to her” and at this point she had embezzled over \$4000.00 from the company. I told the Board member how to find the proof in the books that it was fictitious. They also told me about a construction loan where a significant amount of the money had been misappropriated and still no construction had been started.

Linda was a bad manager when I was there. The Board was worse.

Some possible answers to the case questions:

CASE QUESTIONS

1. Has fraud been committed? Against whom?

Yes, fraud has been committed against the Housing Authority. Furthermore, fraud has been committed against the federal government and state government in terms of reporting income for tax purposes, workers' compensation, and unemployment compensation coverage.

2. What consequences could there be to the organization for "dropping" the issue, and not investigating fully Judy's statements about Linda?

Failure to investigate the issues would increase the organization's culpability and likely result in higher fines and jail times according to the Federal Sentencing Guidelines (see <http://www.ussc.gov/2002guid/tabconchapt8.htm>). It would also give the impression that the organization is not concerned with obeying the laws and that it will not investigate such future acts, which could result in more criminal behavior from the organization's employees. It would in essence give the message that the type of behavior conducted by Linda is appropriate and okay. It could also cause the resignation of Carol, since she is obviously concerned about the issue and feels something has been done that is illegal.

In this case "the Board" is synonymous with the organization. Generally, the Board has some legal cover as long as they are acting with or using "good business judgment." They certainly had no way of knowing that Linda and Judy were colluding to defraud the federal government. However, once they were told by Carol of the fraud, they have an increased burden to act to rectify the situation or they could be held jointly and or individually liable for the fraud.

3. If Linda is allowed to remain in her position, what is the likelihood that she will harass or terminate Carol?

Given the history of other such situations in other firms, there is a great chance that Linda will harass Carol. Linda is in power and will remain in power, having the opportunity and the motive to make Carol's life miserable. Linda will probably try and push the blame onto Carol. There is every reason to believe that she (Linda) will try to make Carol the legal scapegoat. Carol needs to be very careful that she has all of the legal documentation in order to show that she acted in a timely and professional manner.

4. If Carol suffered harassment or was terminated, in this case, could the organization be held liable for failing to protect Carol's job after she disclosed the fraud?

Yes, under whistleblower protection laws enacted by the Federal Government as well as many states (see <http://whistleblowerlaws.com/protection.htm>), there are serious repercussions. For example, here is what the False Claims Act states: "Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of his employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole." **"Some federal whistleblower statutes of limitations are as short as 30 days from the date of the alleged retaliation.** A retaliation claim must be brought to the attention of the appropriate federal government official within that time period or cannot be pursued." Source for the quotes just provided: <http://whistleblowerlaws.com/protection.htm>.

5. Should the Housing Authority be told of Judy's income? What if the client, the Board of Trustees, does not give Carol consent to notify the Housing Authority?

Yes, in an effort to provide full disclosure, the Housing Authority should be notified of Judy's income by the Board of Trustees. If the Board of Trustees does not give Carol such permission, she should consult with a competent attorney. It sounds like a silly answer, but in many cases it is the only answer for a person not trained in the law.

One other issue to consider is the income verification form that Carol signed. We do not know if she or the firm signed away their right to confidentiality. We do not know for certain if by signing the form she and the firm took on a greater obligation for subsequent disclosure.

6. In this case, Carol has many job responsibilities. Some would even claim she has too many different things for which to be responsible. What ethical dilemmas result from extra heavy work loads for employees? What are the costs to a company?

Managers are often overworked and this case was written to help demonstrate this fact (e.g., the asbestos removal project in addition to everything else the manager was responsible for). They may therefore not wish to pursue lengthy investigations or to file complaints in a timely manner – the time to engage in such appropriate behavior has to come from somewhere, and it will likely come out of family/personal time since the employee is probably a salaried employee.

Overworked managers often will trust employees and fellow managers to fulfill their responsibilities without properly checking up on them due to lack of time. This often creates an environment where fraud can thrive. A larger segregation of duties will shift the burden of responsibility more evenly throughout the company and allow more time for managers to follow proper procedures and prevent fraud from occurring.

7. If the company in question was a 501(c)(3) non-profit organization which is allowed to use volunteers, would this still be an issue? (Could Judy be reclassified as a volunteer to avoid the employment laws?) Would fraud still have been committed against the Housing Authority (or the company) if this was a non-profit?

Being a tax exempt organization does not change your obligations with respect to employment law. Furthermore, there is no way that Judy could be classified as a "volunteer." As was explained in the case, she meets all of the definitions of an employee. Therefore the firm would have followed all of the applicable employment laws. The firm could not "after the fact" try to argue that she was a volunteer.

8. What should Carol do?

Student answers will vary since people approach and respond to ethical dilemmas using a variety of methods from various philosophical bents. Those who are consequentialists will view the consequences of taking the various actions (e.g., the impact on Carol, the impact on the firm, the impact on society, the impact on current employees) and then choose the action that brings about the best consequences for those constituents that are deemed most important. Those who are deontologists would not merely look at the consequences of the various acts, but also look at their values to help guide their behavior (e.g., "my value is to always obey the law no matter what, so I will report unlawful conduct). Some have the ethical philosophy that says whatever is legal is ethical and whatever is illegal is unethical. Still others would want justice and equity to occur.

Clearly the case calls for much reflection on the part of the student. There is no easy answer. Whatever one chooses will have possible negative consequences – for Carol, for the organization, and for others involved (Linda, Judy, the Board, etc.).