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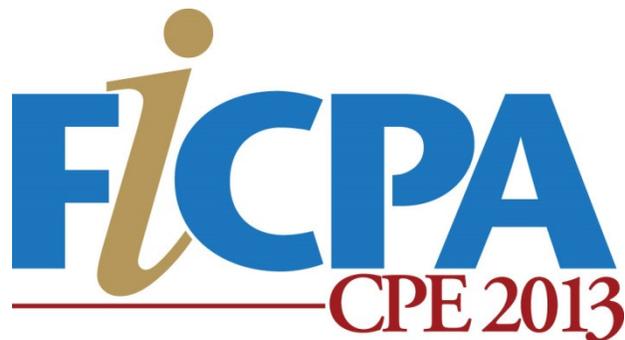
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Ethics: Protecting the Integrity of Florida CPAs



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325 West College Avenue
Tallahassee, FL 32301
(800) 342-3197 (In Florida)
(850) 224-2727
www.ficpa.org

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Developed for the FICPA by:

Cecil Patterson, Jr., CPA
Patterson CPA Group, Inc.
Ponte Vedra Beach, Florida
pat@pattersoncpafirm.com



For more information, contact the Member Service Center at:

Florida Institute of CPAs
325 West College Avenue
Tallahassee, FL 32301
(800) 342-3197 (in Florida) or (850) 224-2727
www.ficpa.org/ethics

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Additionally, the professional standards, pronouncements, procedures, and statutes may change from time to time. It is considered the participant's responsibility to stay current and updated on these issues. Contact the AICPA or DBPR/BOA if you have questions on the authoritative literature covered in this course.

ABOUT THE AUTHOR

Cecil "Pat" Patterson, Jr., CPA is an award winning author, speaker, and discussion leader for continuing education courses and numerous state societies. His degrees include a Bachelor of Science in Accounting and a Master of Business Administration. In addition to being in charge of his own CPA firm for over thirty years, Mr. Patterson has experience at the national CPA firm level, at the corporate level as a chief financial officer, and as an adjunct professor at the university level.

His firm is involved in the full spectrum of CPA activities including auditing, accounting services, federal and state corporate and individual income tax preparation, and consulting services to clients, businesses, and other professionals. The AICPA recognized the firm for its work in the "virtual office" field.

Memberships include:

- Member, American Institute of Certified Public Accountants (AICPA)
- Member, Florida Institute of Certified Public Accountants (FICPA)

FICPA Service:

- Member, Executive Committee
- Member, Board of Governors
- Member, MEGA CPE Conference Committee
- Member, Accounting Show Committee
- Trustee, Educational Foundation, Inc.
- Member and Former Chair, Continuing Professional Education Committee

Honors and Awards include:

- Outstanding Discussion Leader, FICPA
- Outstanding Author, FICPA
- Distinguished Discussion Leader, New York Society of CPAs
- Outstanding Committee Award, FICPA

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CHAPTER 1

Background and Overview

Learning Objectives

The purpose of Chapter 1 is to provide an overview of the course and environmental background of ethics, and to review some of the ethical implications impacting our profession. The learning objectives for this chapter are:

1. Explain Florida's ethics requirement for CPE.
2. Define the term "ethics".
3. Describe the origins of ethical behavior.
4. Explain how the AICPA's *Code of Professional Conduct* applies to CPAs licensed in Florida.
5. Apply the AICPA's Ethics Decision Trees to workplace situations.

Chapter Content

The Ethics Requirement

473.312 Continuing Education

(1)(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

All Florida licensees – whether practicing in the public or private sector – are required by state law to take four hours of ethics CPE each reestablishment period.

The CPE credit-hour requirements for active Florida licensed CPAs are 80 hours over a two-year reporting period that includes:

- At least 20 hours in Accounting & Auditing;
- A maximum 20 hours in Behavioral;
- Four hours of Ethics; and,
- No limitation or requirement for Technical Business.

To fulfill the ethics requirement, a CPA must take ethics instruction from a provider that has been pre-approved by the Florida Board of Accountancy. The Florida Institute of Certified Public Accountants (FICPA) is an approved provider.

As a result of the financial scandals in recent years, efforts to address corporate accountability and fraud culminated with the passage of the Sarbanes-Oxley Act (SOX) in 2002. States responded, too with an increased emphasis on ethics and, in 2004, Florida became the **37th state** to establish an ethics requirement for CPA licensure renewal. Today, all 50 states have this requirement in place.

Major Course Topics

This course presents the CPA profession in Florida with an opportunity to review the basis and background of ethical considerations, to reinforce that not only are CPAs expected to do what is ethically correct, but they also should avoid even the appearance of impropriety. Reviewing pertinent laws and rules and discussing standards serves to only ensure that as professionals, we understand and comply with the same requirements and rules.

Ultimately, the goal of Florida's ethics requirement for CPAs is to provide for public protection by having licensed individuals periodically demonstrate an understanding of Florida laws and rules governing their behavior and understand the widely recognized components of an effective ethics program.

The major topics of this course (with corresponding chapter) are:

- Relationship of Florida laws and rules to national standards (Chapter 1)
- Ethical applications in business today (Chapter 2)
- Florida Statutes, Chapter 455, 473, and FAC 61H1 and how they relate to integrity and objectivity, commissions, contingencies, and communications (Chapters 3-5)
- Issues of competency in public accounting (Chapter 6)
- Tax ethics and the implications of tax ethical behavior (Chapter 7)
- The relationships of ethics and independence rules and implications to public accounting (Chapter 8)
- Ethical responsibilities to clients other practical considerations (Chapter 9)
- Future implications for CPAs and ethics (Chapter 10)

What are Ethics?

As defined:

ethic

Pronunciation: 'e-thik

Function: *noun*

Etymology: Middle English *ethik*, from Middle French *ethique*, from Latin *ethice*, from Greek *EthikE*, from *Ethikos*

1 *plural but singular or plural in construction* : the discipline dealing with what is good and bad and with moral duty and obligation
2 a : a set of moral principles or values **b** : a theory or system of moral values < the present-day materialistic *ethic* > **c** *plural but singular or plural in construction* : the principles of conduct governing an individual or a group < professional *ethics* > **d** : a guiding philosophy

situation ethics

Function: *noun*

: a system of ethics by which acts are judged within their contexts instead of by categorical principles

Ethical Behavior Defined

The Malcolm Baldrige Award - Educational Criteria for Performance Excellence – defines the term “ethical behavior” below to aid organizations in completing their submission.

“The term “ethical behavior” refers to how an organization ensures that all its decisions, actions, and stakeholder interactions conform to the organization’s moral and professional principles. These principles should support all applicable laws and regulations and are the foundation for the organization’s culture and values. They define “right” and “wrong” behavior.

“Senior leaders should act as role models for these principles of behavior. These principles apply to all individuals involved in the organization, and need to be communicated and reinforced on a regular basis. Although there is no universal model for ethical behavior, senior leaders should ensure that the organization’s mission and vision are aligned with its ethical principles. Ethical behavior should be practiced with all stakeholders, staff, partners, suppliers, and the organization’s local community.

“While some organizations may view their ethical principles as boundary conditions restricting behavior, well-designed and clearly articulated ethical principles should empower people to make effective decisions with great confidence.”

Ethics as a System

Ethics is often called a set or system of moral values, principles, or duties.

Key expressions for ethics are:

- **What ought a person to do?**
- **What ought a person to not do?**

- What attitudes are viewed as good?
- What behaviors are viewed as good?
- Why are they viewed as good?

Ethics and Philosophy

Ethics has traditionally been considered a part of philosophy.

Philosophy is a study of the principles of any activity. It is an examination of the basic concepts of a branch of knowledge or academic study devoted to the systematic examination of basic concepts such as:

- truth
- existence
- reality
- causality
- freedom

It is also a school of thought or a particular system of thought or doctrine.

It is important to understand how ethics relate to other disciplines such as:

- psychology
- sociology
- political
- science
- religion

Ethics and Psychology

When new ethical problems arise in society, people often try to consult with a psychologist or an expert in psychology. Technically, this is in error.

Psychology can only tell us what the average person does and what may result if averages hold.

Psychology lacks any authority to speak of what human behavior ought to be. Psychology helps people understand why they do what they do and how they may change.

Psychology, sociology, and cultural anthropology are considered behavioral sciences. As such they all fall roughly into the same category as psychology. They should be left to descriptive sciences such as how society functions, what behavior results in what and other issues. However, they often become prescriptive.

Ethics and Religion

Religion most often has a concern with moral conduct and with setting normal behavior. Religions often have different sets of ethical values depending on the definition of the religion. However, most people think of their religion as being concerned with what a person ought to be and do. Ethics is often a common ground for different religions.

Origin of Ethics

There is no argument that ethics comes from a background of deep moral thought and discussions from centuries ago. There is also no argument that ethics comes from religious thought and discussions from centuries past. However, the ethics in this class are for **“ethics applicable to the practice of public accounting”** as specified in FS 473.312(1)(c).

Teaching of Ethics

“Can you teach someone to be ethical?”

No, either it is in one’s self or it is not.

“Can you teach someone what is ethical behavior?”

Yes, it is a system of values or principles for actions.

CPAs in Crisis

This course is designed to explore how the CPA profession navigates the current professional challenges “in the danger zone” while reinforcing and protecting the reputation that has made CPAs preeminent business leaders in communities. **In other words, what are some of our profession’s crisis situations, and what are the opportunities.**

Ethics and the CPA Profession

The ethics of our profession begins with the individual. Our organizational ethics are guided by our individual ethics. The public’s perception of our organization’s ethics is largely based on CPA’s collective adherence to professional standards of individual ethical practice.

Therefore, your behavior, your response, and your actions are a reflection on you and your profession.

For more than 100 years, the outstanding reputation of the accounting profession has been based on such core values as:

- Honesty
- Integrity
- Trustworthiness

Generally speaking, the profession's core values are based on doing what is right. Now, more than ever the profession must reflect those values and responsibilities to ensure that we maintain our excellent reputation for years to come.

However, does the general public share these same views?

Responding to a Crisis

Some say the ultimate reason the Florida legislature established this ethics requirement was in response to a crisis. Corporate and individual failures, frauds and scandals have placed the accounting profession in a less than favorable light in the United States and some would say globally. Such events have had a devastating effect on the lives of those involved or affected by the financial shortcomings and misdeeds. There have been responses to this confidence crisis at many levels ranging from regulatory to professional to educational to personal.

These situations include examples such as:

- Mutual fund companies and fund managers engaging in illegal trading practices
- Mismanagement of financial institutions
- Pharmaceutical companies engaging in ethical violations and cover-ups
- Use of steroids and performance enhancing drugs by athletes
- Politicians and government officials in blatant ethical violations and illegal conduct
- Sexual misconduct by political and religious leaders
- Internet spammers, virus creators, and hackers on the internet
- Moral indecency on the internet
- Illegal downloading and publishing of music and data
- Accounting wrongdoing (accountants have feet of clay also)

Changes Have Created a Crossroads for the Profession

Beyond the increased emphasis on ethics at both the state and national levels, monumental changes in the CPA profession have amplified the need for ethics education.

These changes in the CPA profession include:

- Increased emphasis on ethics at state and national levels
- Changes in ownership requirements for a CPA firm

- Changes in solicitations made by CPAs
- Changes in commissions and contingencies for CPAs
- Changes in the sale of financial products by CPAs and CPA firms
- Competitive bidding by CPAs and CPA firms

Ethics Regulation

There are many professional and regulatory organizations playing an ongoing role in the ethics of the CPA profession:

1. Securities and Exchange Commission (SEC)
2. Public Company Accounting Oversight Board (PCAOB)
3. American Institute of Certified Public Accountants (AICPA)
4. Florida Board of Accountancy (BOA)
5. Florida Institute of Certified Public Accountants (FICPA)
6. Internal Revenue Service (IRS)
7. State regulatory bodies
8. Others

There is a fundamental expectation by all such organizations that CPAs will conduct themselves in an ethical manner adhering to high professional standards.

Discussion Points

1.1 Public Perception of Accountants

The bedrock of the accounting profession is based on integrity and objectivity. Accountants pride themselves on doing the right thing.

However, does the general public share these same views? Are they swayed by news of accounting scandals? What have we learned from these scandals?

1.2 Ethical Practices

Each day accountants and their organizations make financial and business decisions. Accountants also have rules and regulations to follow regarding professional conduct and the practice of accounting.

How should an accountant respond if a client asks him or her to doing something legal but unethical?

1.3 Current Examples of Ethical Behavior

We routinely read news articles about individuals and companies who have made questionable decisions that result in the appearance of unethical behavior. In other cases, laws have been broken and legal prosecution has occurred.

What are some examples you've heard about recently that illustrate unethical or questionable behavior by individuals or organizations?

AICPA Code of Professional Conduct

The AICPA's *Code of Professional Conduct* mirrors professional codes of other disciplines. The AICPA's Code (Preamble 0.300.010) reads:

.01 Membership in the AICPA is voluntary, and a member assumes an obligation of self-discipline that may be in addition to the requirements of laws and regulations.

.02 These principles express the profession's recognition of its responsibilities to the public, to clients, and to colleagues. They guide members in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. The principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage.

General Questions and Answers

Below are selected general questions and answers regarding the AICPA's *Code of Professional Conduct*. For more information, visit the AICPA Web site at www.aicpa.org.

1. Whom does the Code of Professional Conduct govern?

The Code applies to all individuals that are members of the American Institute of Certified Public Accountants. In addition, certain state CPA societies and state boards of accountancy have incorporated all, or parts of the Code into their own rules of conduct.

Parts of the Code were revised November 2011.

<http://www.aicpa.org/Research/Standards/CodeOfConduct/Pages/default.aspx>

2. Can the AICPA revoke my license due to a disciplinary matter?

No. The AICPA cannot revoke a member's license, only the applicable state licensing board can. The AICPA can terminate or suspend an individual's membership in the AICPA.

<http://www.aicpa.org/About/Governance/Bylaws/Pages/sec200.aspx>

<http://www.aicpa.org/About/Governance/Bylaws/Pages/sec700.aspx>

3. Does the AICPA contact other state CPA societies and regulatory agencies having disciplinary responsibilities?

The AICPA and 49 state CPA societies joined together to create the Joint Ethics Enforcement Program (JEEP) in order to permit joint enforcement of their respective codes of professional conduct with respect to a member by means of a single investigation. Accordingly, investigative information is shared between the AICPA and the state CPA societies. In certain cases, the AICPA will report its findings to the federal and/or state regulatory agencies, including state boards that have jurisdiction over the matter. [Note: As of September 2011, the following states and territories are not/ no longer members of JEEP – Arizona, California, Florida, Iowa, Utah and Puerto Rico.]

<http://www.aicpa.org/InterestAreas/ProfessionalEthics/Resources/EthicsEnforcement/Pages/default.aspx>

4. Do other state CPA societies and federal and/or state regulatory agencies refer matters to the AICPA?

The bylaws of most state societies include similar powers by incorporating the Joint Ethics Enforcement Programs (JEEP) agreements. In addition, the AICPA Professional Ethics Division receives referrals from the various state licensing boards as well as federal agencies such as the Securities and Exchange Commission and various Inspectors General.

5. Am I subject to the same rules of the Code if I practice public accounting or work in business and industry?

All members of the AICPA are subject to the same rules of the *Code of Professional Conduct*. Due to the manner in which a member in business and industry, academe, and government practice, many rules contained in the *Code of Professional Conduct may not be applicable*. An example of such rules applies to independence, attest engagements, commissions and contingent fees, and client record retention, to name a few. For a complete listing of the additional applicable rules please refer to the entire *Code of Professional Conduct*.

6. How could I have a conflict of interest when I am no longer working in public accounting?

While the question of independence is assumed to automatically impair by virtue of an employment arrangement, the concept of objectivity becomes even more important. If a member, while holding out to be a CPA, has a relationship with another person, entity, product, or service that could, in the member's professional judgment, be viewed by an employer as impairing objectivity, the member must disclose such a relationship to the employer.

Discussion Points

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Ethical Decision Making Trees

On the following pages are several flowcharts developed by the AICPA on ethical decision-making. The corresponding notes below are referenced in the flowcharts.

Corresponding Notes

1. When speaking with your manager or a more senior executive, carefully gauge your satisfaction with the response. Bear in mind that your manager or other executive might be a party to the situation that you have observed, so approach the response with the necessary degree of professional skepticism.
2. It appears you have successfully managed your way through this challenge. It is recommended that you maintain and secure all documentation related to this matter as described in your records retention policy or as recommended by your legal counsel in case the issue resurfaces. Has the organization's processes, internal control system, and culture changed in response to this matter? Are these changes sufficient to minimize the recurrence of a challenge like this one? Evaluate your answers and consider consulting with management, an outside mentor, or other neutral party whom you respect.
3. Consider whether it is appropriate for you to continue your employment at this company. Consider the severity and implications of the issue you have identified and whether it should be reported to the outside accountants, regulatory agency, bank or other lending institution, owner or investor committee, Board of Directors, or another party.



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Figure 1.1 Ethics Decision Tree for CPAs in Business and Industry
Source: American Institutes of CPAs

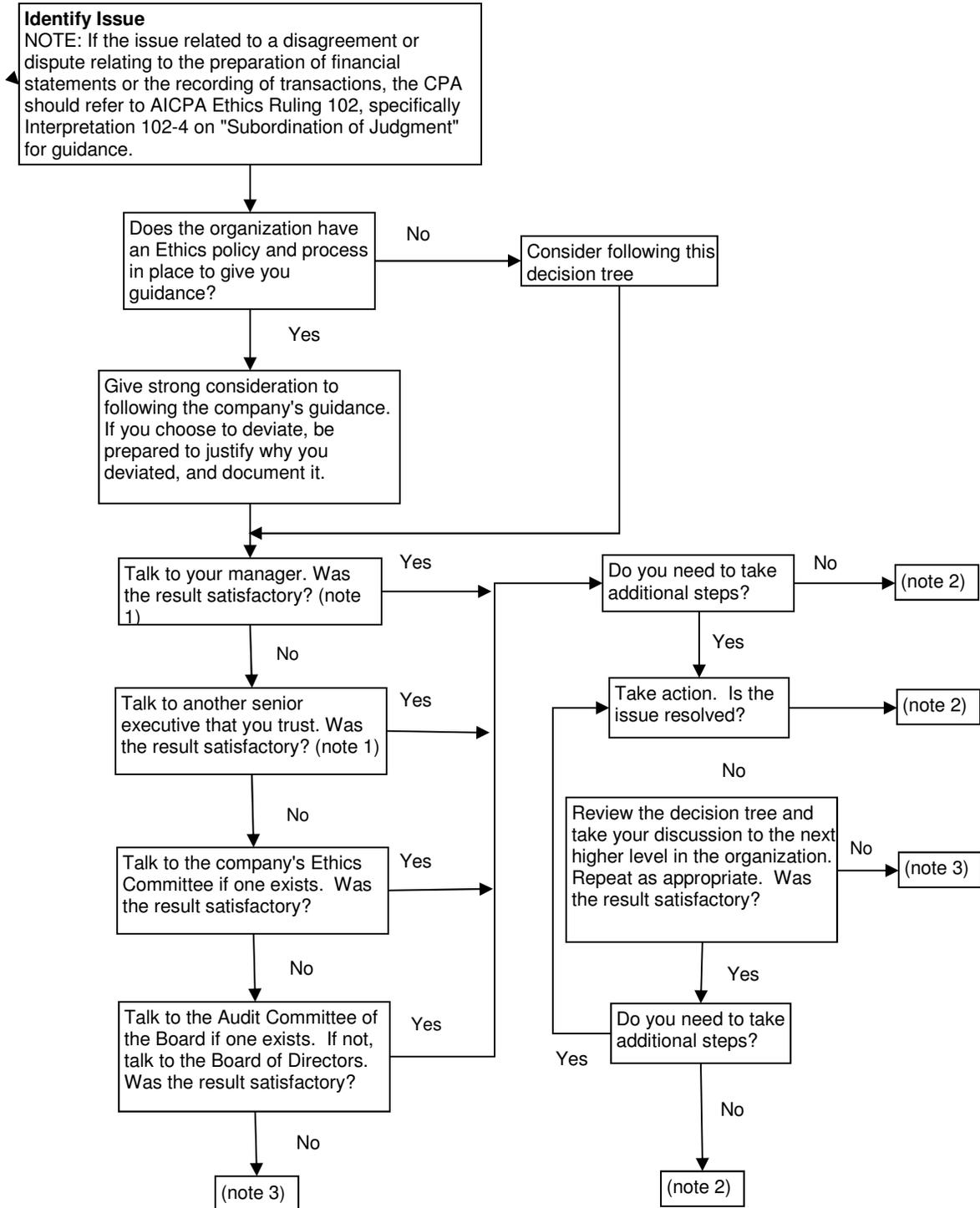
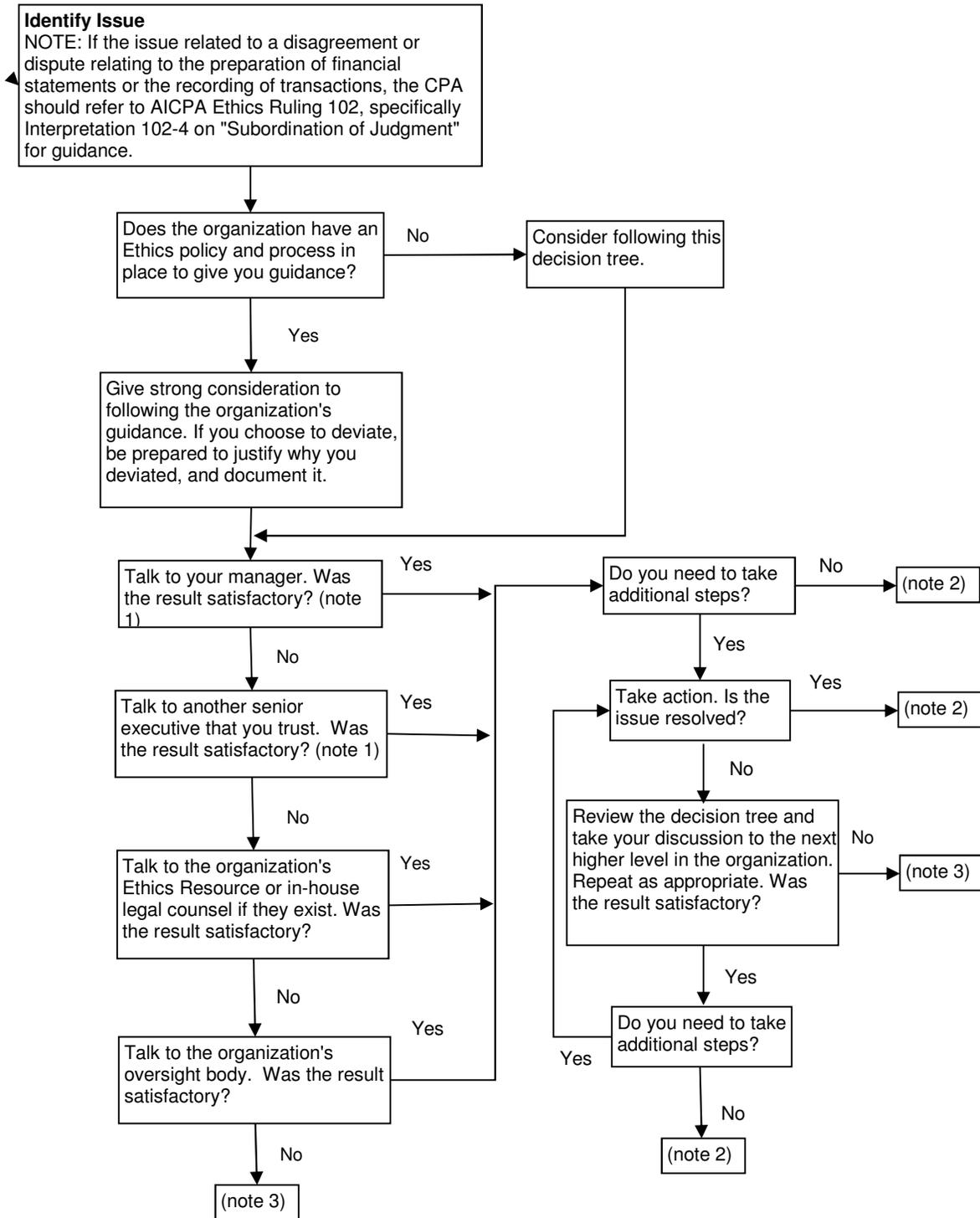


Figure 1.2 Ethics Decision Tree for CPAs in Government
Source: American Institutes of CPAs



References

AICPA Ethics Decision Trees

For CPAs in Business and Industry

http://www.aicpa.org/InterestAreas/ProfessionalEthics/Resources/EthicsEnforcement/DownloadableDocuments/decision_tree_bai.pdf

For CPAs in Government

<http://www.aicpa.org/ForThePublic/AuditCommitteeEffectiveness/GuidanceandResources/DownloadableDocuments/030.pdf>

AICPA Code of Professional Conduct

<http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/default.aspx>

Statutory References

Florida's Ethics Requirement – Administrative Rules

- **61H1-33.003(3)(c)** – Outlines the course content for ethics – Chapters 455 and 473, F.S., the related administrative rules, and other appropriate topics.
- **61H1-33.0031** – States the statutory requirement for four hours of ethics CPE, and that if taken in two-hour modules; both modules must be from the same provider.
- **61H1-33.0032** – Outlines eligibility requirements and the application process to become an ethics course provider. No CPA who has been disciplined by the Florida BOA can teach the course.
- **61H1-33.0033** – Explains an ethics course instructor must be a CPA “who has practiced in a public accounting firm for five of the last 10 years, whose background, training, education or experience makes it appropriate for the person to teach the course.” Lists requirements for certificate of attendance, promotional materials, CPE credit, 80% passing rate on exams for ethics self-study, and NASBA Quality Assurance Service.
- **61H1-33.0034** – Provides the Board of Accountancy the right to evaluate an ethics course through observation or review of materials.
- **61H1-33.00341** – States that CPE providers are approved only for the biennium that their application was received and approved. They need to reapply 60 days before their expiration.
- **61H1-33.00342** – Describes the instructional standards set by the Florida Board of Accountancy for ethics programs.

To view the full text on these or any other statute or rule, go to:

<http://www.myfloridalicense.com/dbpr/cpa/statutes.html>

CHAPTER 2

Ethical Beliefs & Behavior in U.S. Businesses

Learning Objectives

The purpose of Chapter 2 is to present an overview of the ethical environment, beliefs, and behavior in US businesses. The learning objectives for this chapter are:

1. Note the key results from the Ethics Resource Center's 2011 *National Business Ethics Survey* of U.S. businesses.
2. Examine the main points and recommended action steps from the Ethics Resource Center Fellows Program, *Retaliation in the Workplace*.
3. Note the key results from the Association of Certified Fraud Examiners 2012 *Report to the Nations*.

Chapter Content

This chapter focuses on business ethics at the corporate or organizational level. We will examine:

- 2011 National Business Ethics Survey
 - Effects from the Recession
 - Social networking
- Retaliation in the Workplace
- 2012 Report to the Nations (fraud)

National Business Ethics Survey - 2011

The Ethics Resource Center (ERC) conducted a significant survey in 2011 to identify the beliefs and behaviors of workplace ethics in businesses today.

The 2011 National Business Ethics Survey (NBES) is part of a larger workplace survey that polled 4,800 employees in the business, government and nonprofit sectors. Their responses in the business sector are presented below. Similar reports cover the government and nonprofit sectors.

Since 1994, the Ethics Resource Center has fielded the NBES, a nationally representative survey of employees at all levels, to understand how they view ethics and compliance at work. This 2011 report is the seventh in the series.

The ERC was founded in 1922 and is America's oldest nonprofit organization devoted to the advancement of high ethical standards and practices in public and private institutions. ERC has been a resource for public and private institutions committed to a strong ethical culture for over 90 years.

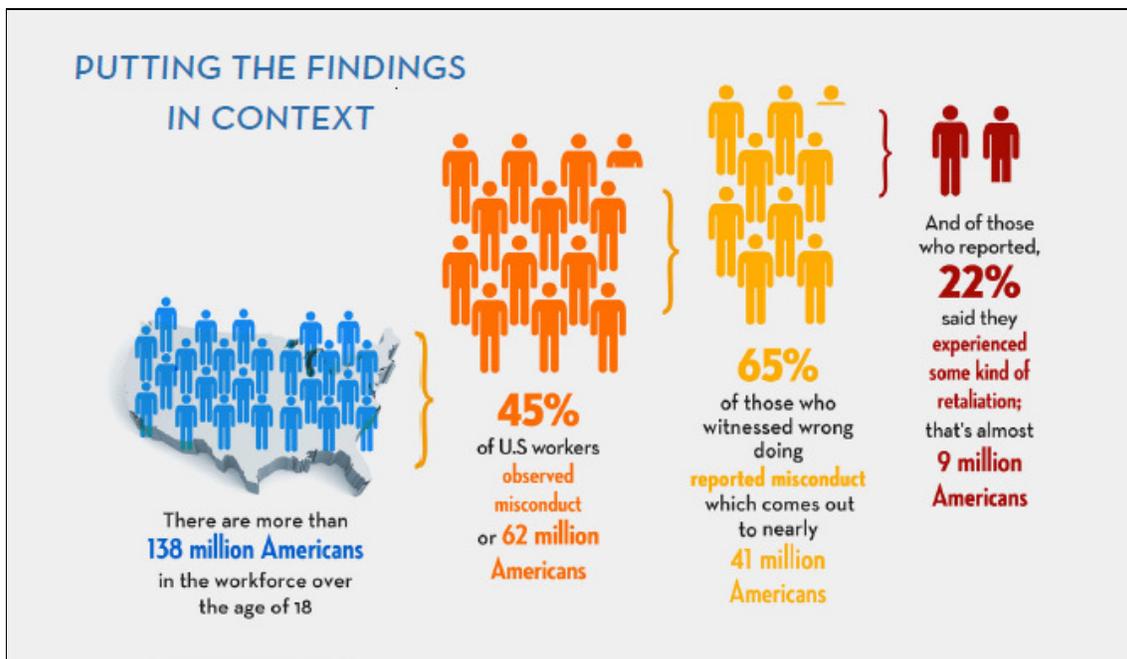
NBES is the most exacting longitudinal research effort examining trends in business ethics from the employee perspective. The long-term nature of the study is important because it provides context for national trends. NBES is the only longitudinal study that tracks the views of employees at all levels within companies to reveal real-life views of what is happening within businesses and the ethics risks they face.

Survey Results

Two years after ERC showed a rebound in ethical workplace behavior, the 2011 NBES shows a bifurcated picture and a pattern unlike any other year. On the positive side, the data reveal historically low levels of current misconduct in the American workplace and record high levels of employee reporting.

- The percentage of employees who witnessed misconduct at work fell to a new low of 45 percent. That compares to 49 percent in 2009 and is well down from the record high of 55 percent in 2007.
- Those who reported the bad behavior they saw reached a record high of 65 percent, up from 63 percent two years earlier and 12 percentage points higher than the record low of 53 percent in 2005.

Figure 2.1: NBES Findings



But clouding this good news are ominous warning signs of a potentially significant ethics decline ahead, and, the negative indicators predominate:

- Retaliation against employee whistleblowers rose sharply. More than one in five employees (22 percent) who reported misconduct say they experienced some form of retaliation in return. That compares to 12 percent who experienced retaliation in 2007 and 15 percent in 2009.
- The percentage of employees who perceived pressure to compromise standards in order to do their jobs climbed five points to 13 percent, just shy of the all-time high of 14 percent in 2000.
- The share of companies with weak ethics cultures also climbed to near record levels at 42 percent, up from 35 percent two years ago.

The co-existence of widespread retaliation and pressure with historically low misconduct and high reporting is unlike any previous pattern. Two influences stood out in the unusual shift in trends:

1. **The economy**
2. **The unique experiences of those actively using social networking at work**

Effects from the Recession

For many Americans, the economy in 2013 seems only slightly better than during the recession. Growth is sluggish, the unemployment rate remains stubbornly high, and fear of a second recession fosters continued anxiety. NBES continues to show that companies behave differently during economic difficulties. The decisions and behaviors of their leaders are perceived by employees as a heightened commitment to ethics. As a result, employees adopt a higher standard of conduct for themselves.

- 34 percent of employees say management now watches them more closely.
- 42 percent say their company has increased efforts to raise awareness about ethics.
- 30 percent of employees agree that bad actors in their company are laying low because of fears about the recession.

Post-recession conduct among employees is remarkably similar to their behavior during the recession. This phenomenon is a significant factor in the historically low rates of misconduct and high rates of reporting. That matches historical data, which show that ethical conduct improves when the economy cools.

As the economy gets better – and companies and employees become more optimistic about their financial futures – it seems likely that misconduct will rise and reporting will drop, mirroring the growth in pressure and retaliation that have already taken place and conforming to historic patterns.

Influence of Social Networkers

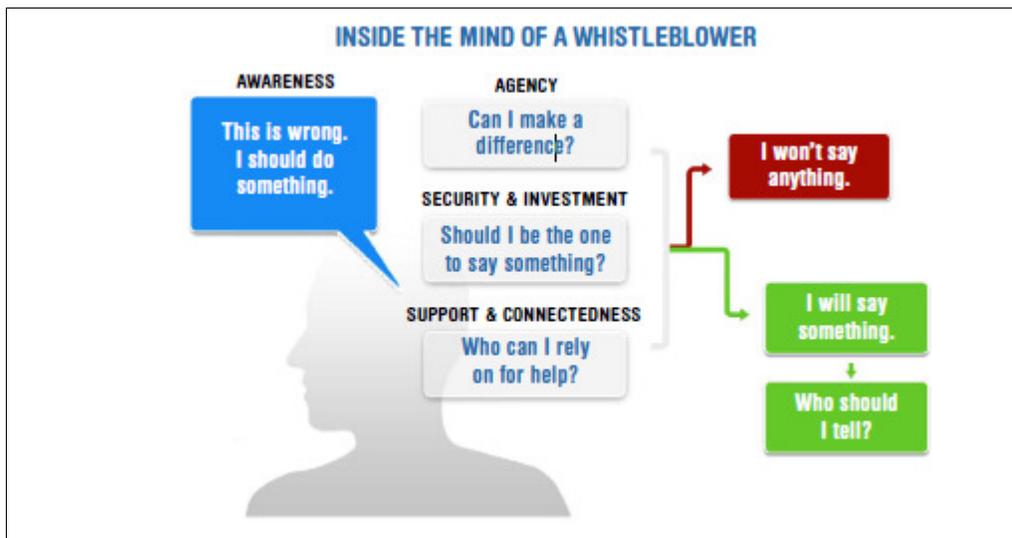
The other key element driving the 2011 NBES results is the rise in influence of active social networkers. A surprising and worrisome divide exists within the workplace between employees who spend substantial time on social networks and those who do not. Active social networkers report far more negative experiences in their workplaces. As a group, they are much more likely to experience pressure to compromise ethics standards and to experience retaliation for reporting misconduct than co-workers who are less involved with social networking.

- 32 percent of active social networkers are much more likely to feel pressure than less active networkers and non-networkers.
- Most of the active networkers who reported misconduct say they experienced retaliation as a result: 56 percent compared to just 18 percent of less active social networkers and non-networkers.

Active social networkers show a higher tolerance for certain activities that could be considered questionable. For example, among active social networkers, half feel it is acceptable to keep copies of confidential work documents in case they need them in their next job, compared to only 15 percent of their colleagues.

An Inside Look at Whistleblowers

Figure 2-2: Inside the Mind of a Whistleblower



The 2011 NBES asked several questions to help uncover what compels employees to speak up, how they decide who they will tell, and what factors push them to go to an outside source. Even though there is a slight distinction between “reporter” (employees who report misconduct internally) and whistleblower (employees who report misconduct outside the company), the data showed that they are essentially the

same type of person. The typical whistleblower will often try to address the problem within his or her own company first before choosing to report it to an outside source.

The question for management is - does the company have a safe, structured, and accessible way for employees to report misconduct?

Increased Retaliation against Whistleblowers

In spite of the success of ethics and compliance programs, the complex problem of retaliation threatens to undo some of the progress. Retaliation – defined as retribution exacted by co-workers or managers against an employee who has reported workplace misconduct – can take many forms such as a cold shoulder, verbal abuse, physical threats or attacks by coworkers. Sometimes, managers retaliate by denying raises or promotions, changing the reporters' work responsibilities, excluding them from desirable assignments or simply making life miserable for the targeted employees. To make matters even more challenging, perceived retaliation (i.e. the perception of retaliation that did not in fact occur) can be equally threatening to a company culture.

Retaliation is on the Rise

The 2011 NBES detailed a worrisome upward trend in retaliation. More than one in five (22 percent) of those who reported misconduct in 2011 also said they perceived retaliation for doing so. That's an increase from 15 percent in 2009. Similarly, the Equal Employment Opportunity Commission says that retaliation claims doubled between 1997-2011 and have become more prevalent than complaints about discrimination.

At least as worrisome, the data show an increasing amount of physical retaliation. While the most common form of payback reported by those who experienced retaliation was lost promotions or raises, about 3 in 10 said they experienced physical harm to themselves or their property – an astonishing increase from four percent just two years before.

Still, when large numbers of employees report retaliation, chances are that many really have been victims of payback. Bottom line, management must take all retaliation reports seriously and treat complainants with respect while sorting out the facts.

Heading the list of retaliatory actions are: exclusion from decision-making or other workplace activities, a cold shoulder from co-workers, and verbal abuse from a supervisor or other manager.

Figure 2.3: Retaliation more Widespread in 2011

Type of Retaliation	2009	2011
Excluded from decisions and work activity by supervisor or management	62%	64%
Given a cold shoulder by other employees	60%	62%
Verbal abuse by supervisor or someone else in management	55%	62%
Almost lost job	48%	56%
Not given promotions or raises	43%	55%
Verbal abuse by other employees	42%	51%
Hours or pay were cut	***	46%
Relocated or reassigned	27%	44%
Demoted	18%	32%
Experienced online harassment	***	31%
Experienced physical harm to your person or property	4%	31%
Harassed at home	***	29%

Fear of Retaliation is Strong

Whatever form it takes, retaliation has a chilling effect on an organization, blocking open communication, driving out good workers to jobs in a safer environment, and undermining ethics cultures by reducing the odds workers will report misconduct. Failure to report is significant because low reporting rates mask problems and allow them to fester unattended.

Recommendations to Limit Retaliation

The ERC Fellows offer the following suggestions for management:

- When retaliation occurs, deal with it swiftly and decisively. Maintain accountability at all levels in the organization.
- Survey employees periodically to assess their willingness to report ethics issues within the organization.
- Train supervisors how to recognize and respond to ethics and compliance issues and how to avoid behavior by themselves or others that might be perceived as retaliatory.

- Implement a process for following up with reporters of misconduct on a regular basis to identify and respond to situations that might reasonably be perceived as retaliatory.
- Ensure that top management explicitly and publicly communicates that retaliation is itself a form of serious misconduct that will not be tolerated, and that any employee or manager who takes retaliatory action will be held accountable.
- Include clear prohibitions against retaliatory behaviors in all ethics and compliance codes and policies.
- Use managers' performance reviews to encourage leadership behaviors that mitigate the potential for retaliation (e.g. is approachable, maintains accountability, keeps commitments, sets a good example).
- Find appropriate ways to recognize those who report misconduct.
- Clearly and publicly communicate how reports of ethics violations and misconduct are handled to ensure that employees perceive the process is fair. When employees perceive processes as fair, they are more likely to look favorably on outcomes.
- While protecting privacy, seek ways to communicate when the organization has acted against retaliation.

2012 Report to the Nations

The ACFE's *2012 Report to the Nations on Occupational Fraud and Abuse* is based on data compiled from a study of 1,388 cases of occupational fraud that occurred worldwide from 94 nations between January 2010 and December 2011. All information was provided by the Certified Fraud Examiners (CFEs) who investigated those cases. This is the seventh in a series of studies.

Key Findings and Highlights

The key findings and highlights of the *2012 Report to the Nations* include:

- **The Impact of Occupational Fraud**
Survey participants estimated that the typical organization loses 5% of its revenues to fraud each year. Applied to the estimated 2011 Gross World Product, this figure translates to a potential projected global fraud loss of more than \$3.5 trillion. The median loss caused by the occupational fraud cases in our study was \$140,000. More than one-fifth of these cases caused losses of at least \$1 million.
- **Fraud Detection**
The frauds reported to us lasted a median of 18 months before being detected. Occupational fraud is more likely to be detected by a tip than by any other

method. The majority of tips reporting fraud come from employees of the victim organization.

- **Victims of Fraud**
Occupational fraud is a significant threat to small businesses. The smallest organizations in our study suffered the largest median losses. These organizations typically employ fewer anti-fraud controls than their larger counterparts, which increases their vulnerability to fraud. As in our prior research, the industries most commonly victimized in our current study were the banking and financial services, government and public administration, and manufacturing sectors. The presence of anti-fraud controls is notably correlated with significant decreases in the cost and duration of occupational fraud schemes. Victim organizations that had implemented any of 16 common anti-fraud controls experienced considerably lower losses and time-to-detection than organizations lacking these controls. Nearly half of victim organizations do not recover any losses that they suffer due to fraud. As of the time of our survey, 49% of victims had not recovered any of the perpetrator's takings; this finding is consistent with our previous research, which indicates that 40–50% of victim organizations do not recover any of their fraud-related losses.
- **Perpetrators of Fraud**
Perpetrators with higher levels of authority tend to cause much larger losses. The median loss among frauds committed by owner/executives was \$573,000, the median loss caused by managers was \$180,000 and the median loss caused by employees was \$60,000. The vast majority (77%) of all frauds in our study were committed by individuals working in one of six departments: accounting, operations, sales, executive/upper management, customer service and purchasing. This distribution was very similar to what we found in our 2010 study. Most occupational fraudsters are first-time offenders with clean employment histories. Approximately 87% of occupational fraudsters had never been charged or convicted of a fraud-related offense, and 84% had never been punished or terminated by an employer for fraud-related conduct. In 81% of cases, the fraudster displayed one or more behavioral red flags that are often associated with fraudulent conduct. Living beyond means (36% of cases), financial difficulties (27%), unusually close association with vendors or customers (19%) and excessive control issues (18%) were the most commonly observed behavioral warning signs.

Conclusions and Recommendations

The nature and threat of occupational fraud is truly universal. Though our research noted some regional differences in the methods used to commit fraud — as well as organizational approaches to preventing and detecting it — many trends and characteristics are similar regardless of where the fraud occurred.

Providing individuals a means to report suspicious activity is a critical part of an anti-fraud program. Fraud reporting mechanisms, such as hotlines, should be set up to receive tips from both internal and external sources and should allow anonymity and confidentiality. Management should actively encourage employees to report suspicious activity, as well as enact and emphasize an anti-retaliation policy.

External audits should not be relied upon as an organization's primary fraud detection method. Such audits were the most commonly implemented control in our study; however, they detected only 3% of the frauds reported to us, and they ranked poorly in limiting fraud losses. While external audits serve an important purpose and can have a strong preventive effect on potential fraud, their usefulness as a means of uncovering fraud is limited.

Targeted fraud awareness training for employees and managers is a critical component of a well-rounded program for preventing and detecting fraud. Not only are employee tips the most common way occupational fraud is detected, but our research shows organizations that have anti-fraud training programs for employees, managers and executives experience lower losses and shorter frauds than organizations without such programs in place. At a minimum, staff members should be educated regarding what actions constitute fraud, how fraud harms everyone in the organization and how to report questionable activity.

Our research continues to show that small businesses are particularly vulnerable to fraud. These organizations typically have fewer resources than their larger counterparts, which often translates to fewer and less-effective anti-fraud controls. In addition, because they have fewer resources, the losses experienced by small businesses tend to have a greater impact than they would in larger organizations. Managers and owners of small businesses should focus their anti-fraud efforts on the most cost-effective control mechanisms, such as hotlines, employee education and setting a proper ethical tone within the organization. Additionally, assessing the specific fraud schemes that pose the greatest threat to the business can help identify those areas that merit additional investment in targeted anti-fraud controls.

Discussion Points

2.1 Retaliation and Ethical Conduct

The perception of retaliation may not always square with objective analysis. In some instances, employees who reported retaliation may be on heightened alert because they have reported misconduct. It's possible, for example, they didn't get that raise or promotion for legitimate work-related reasons. Maybe, the perceived cold shoulder is just about personal dislike, lack of communication, or absentmindedness and not pay back. Or, in some cases, an employee might claim retaliation to distract from their own poor performance.

What do you think? Have you seen an increase in ethical violations in your organization or organizations you work with? An increase in whistleblowing (reporting outside of the company)? An increase in retaliation?

2.2 Whistleblowing

If an accountant observes wrongdoing on the job, is it ever justifiable to remain silent?

2.3 Ethical Situation for CPAs in Industry

What steps would you take if your boss asked you to do something that made you uncomfortable? Would you be able to positively influence the situation and its outcome? Test yourself by viewing this six-minute video about business ethics. Your ability to assess the ethical context of every situation is part of your professional commitment.

<http://www.cgma.org/Resources/Videos/Pages/ethical-conduct.aspx>

References

Ethics Resource Center

2011 National Business Ethics Survey

<http://www.ethics.org/nbes/>

Inside the Mind of a Whistleblower

Supplemental Report to the NBES 2011

Retaliation in the Workplace:

Why it Matters and What Companies Can Do about It

Supplemental Report to the NBES 2011 by the ERC Fellows

AICPA

[CGMA.org](http://www.cgma.org) has a host of reports, tools and videos on this business ethics especially for members in industry

<http://www.cgma.org/Resources/Videos/Pages/ethical-conduct.aspx>

ACFE

2012 Report to the Nations on Occupational Fraud and Abuse

http://www.acfe.com/uploadedFiles/ACFE_Website/Content/rtnn/2012-report-to-nations.pdf

CHAPTER 3

Public Accountancy in Florida (Chapter 455)

Learning Objectives

The purpose of Chapter 3 is to present an overview of public accounting in Florida as cited in §455 F.S. The learning objectives for this chapter are:

1. Describe the role of the Florida Board of Accountancy per Chapter 455, Florida Statutes.
2. Describe the complaint process used by the Florida Board of Accountancy.
3. List reasons that would cause the Florida Board of Accountancy to impose disciplinary actions on a CPA per Chapter 455.227, Florida Statutes.

Chapter Content

This chapter focuses on the role of the Florida Board of Accountancy and the disciplinary process as outlined in Chapter 455, F.S. We will examine:

- Division of Certified Public Accounting
- Disciplinary stats from DBPR and the AICPA
- Legally sufficient and probable cause
- Complaint process and flowchart
- 455.225 Disciplinary Proceedings and actions by BOA
- 455.227 Grounds for Discipline, Penalties and Enforcement
- Unlicensed activity

455.01 Definitions

"*Board*" means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

The Florida Statutes, Chapter 455.01 has the authority to establish a Board. This Board for Accountancy in Florida is generally called the Florida Board of Accountancy. Among its powers and duties is the authority to issue citations, and conduct disciplinary proceedings as set forth below.

The Division of Certified Public Accounting

The *Division of Certified Public Accounting* is a division within Florida's Department of Business and Professional Regulation (DBPR). **The division is responsible for the licensing and regulation of over 31,400 Certified Public Accountants (CPAs) and over 5,200 CPA firms.** Of these, there are 29,203 active and 2,228 inactive licensees (as of May 2013). The Division processes applications for examination and licensure to become a CPA. It also processes applications for reactivation of a CPA license, temporary permit applications, and continuing education reporting forms.

Headquartered in Gainesville, the mission of the division is to ensure that licensees meet the statutory requirements for licensure and practice of certified public accounting as well as to protect the public from unscrupulous and unlicensed practitioners.

The division provides administrative support to the Florida Board of Accountancy which consists of nine members: seven CPAs and two consumers. The Board meets approximately ten times a year at various locations throughout the state. (See the DBPR web site below for meeting dates and locations, agendas, and minutes). Meetings are held statewide and are open to the public. The FICPA encourages all Florida CPAs to attend.

Division of Certified Public Accounting
240 NW 76th Drive, Suite A
Gainesville, FL 32607

Phone: (850) 487-1395
Fax: (352) 333-2508
www.myflorida.com/dbpr/cpa

Figure 3.1: Complaints Received for Accountancy

Issue	07-08	08-09	09-10	10-11	11-12
Complaints received	334	304	301	328	230
Complaints legally sufficient	34	350	235	161	123
Probable cause found	10	69	55	183	35
No probable cause	111	206	172	150	13
Administrative complaints	10	36	24	22	8
Disciplinary action	10	5	48	27	16

Source: DBPR Annual Reports

Figure 3.2: AICPA Disciplinary Activity

By comparison, below is a chart showing AICPA activity investigated by the Professional Ethics Division, Joint Trial Board Division, and AICPA bylaws.

Issue	2011	2012
Cases opened during period	389	768
Summary of case disposition during period:		
Admonished	13	161
Corrective action required	91	244
No violation/ dismissed	50	36
No further action	53	182
Subsequent monitoring completed satisfactorily	29	32
Other	17	17

Source: AICPA Annual Reports – 2011 & 2012

Legally Sufficient and Probable Cause

What is legally sufficient? A complaint is legally sufficient if it contains ultimate facts that show that a violation of Chapter 455, F.S., Chapter 473, F.S. or Chapter 61H1, FAC. In order to determine legal sufficiency, the department may need to gather further information to make that determination.

What is probable cause? If members of the Probable Cause Panel determine that there is *Sufficient Evidence* to support the filing of charges against a licensee, then this is considered probable cause and the case is then presented to the full Board for final action.

Complaint Process

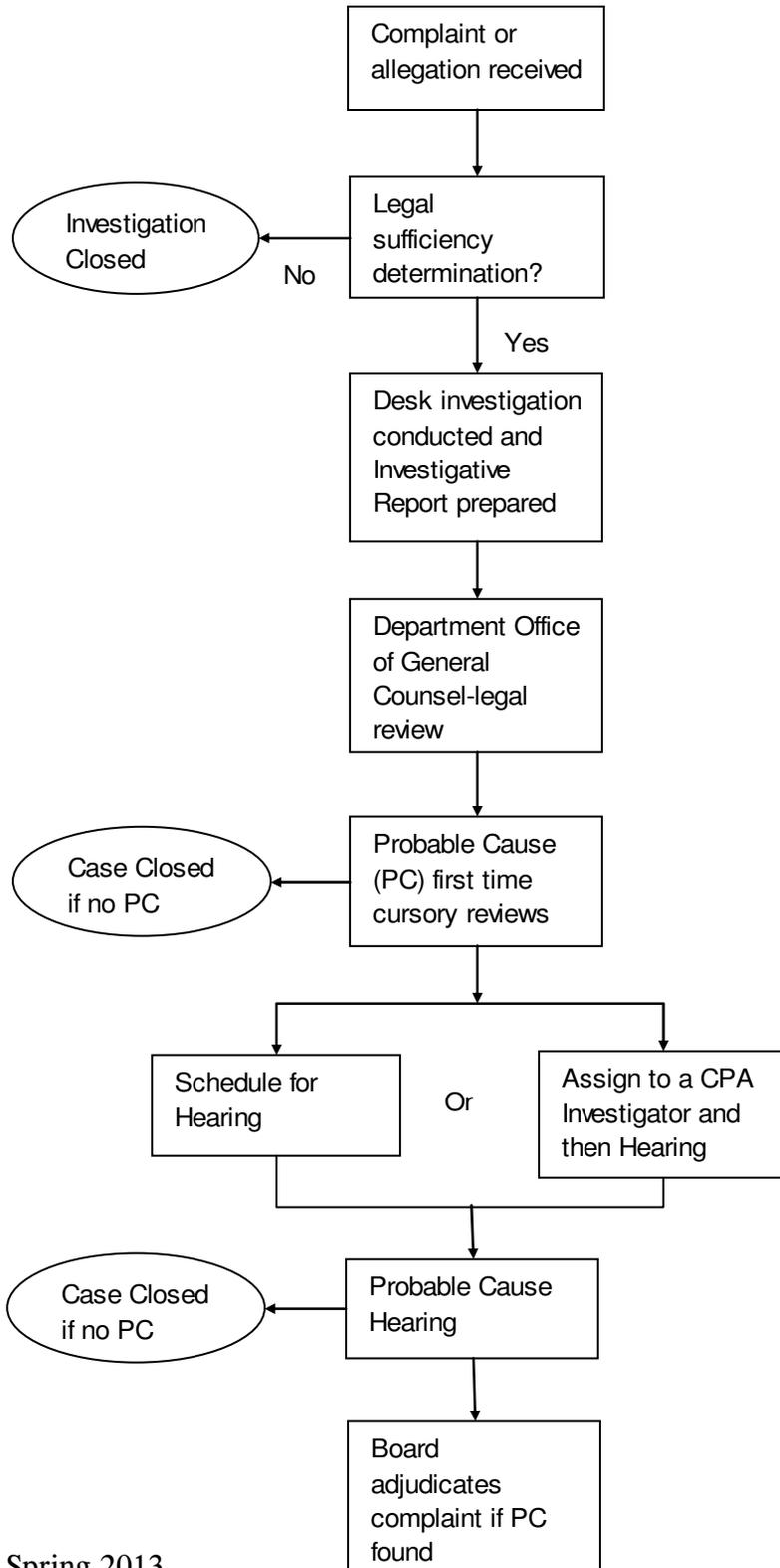
Once a complaint is received by the Department of Business and Professional Regulation, it is transferred to the Board of Accountancy in Gainesville for review and further administration. Figure 3.2 outlines this process.

1. The Department shall investigate any complaint that is in writing, signed by the complainant, and is legally sufficient.
2. The Department may investigate any anonymous complaint or a complaint made by a confidential informant if:
 - the complaint is in writing and legally sufficient;
 - the alleged violation of law or rule is substantial; and,
 - the department has reason to believe that the allegations are true.
3. The Department may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida Statute or Rule.

4. A complaint is legally sufficient if it contains ultimate facts that show that a violation of Chapter 455, F.S., Chapter 473, F.S. or Chapter 61H1, FAC. In order to determine legal sufficiency, the department may need to gather further information to make that determination.
5. When a complaint is legally sufficient, the Department shall promptly furnish a copy of the complaint to the subject.
6. Subject may submit a written response to the information contained in the complaint within 20 days after service.
7. Investigative Report is prepared and the complete file is forwarded to the Department's Office of the General Counsel in order to present the case to the Probable Cause Panel.
8. The Probable Cause Panel is composed of at least three members of the BOA. The Probable Cause Panel conducts a preliminary review of all cases to determine if there is No Probable Cause or more information is required.
 - No Probable Cause - Case Dismissed
 - If there is Sufficient Evidence to support the filing of charges against a licensee
 - Request that the complaint be assigned to a CPA Investigator. Once the investigation is complete, the case will come back to the Probable Cause Panel
9. The Probable Cause Panel determines if Probable Cause exists.
 - Subject may appear or submit written statements
 - Hearing closed to public
 - Probable Cause Panel is responsible for determining Probable Cause or no Probable Cause
 - If no probable cause - case is closed and sealed
 - All investigations and complaint information is confidential until 10 days after probable cause is found
10. If members of the Probable Cause Panel determine that there is *Sufficient Evidence* to support the filing of charges against a licensee, the case is then presented to the full Board for final action.

Figure 3.3: Complaint Process Flowchart

Department of Business and Professional Regulation
Division of Certified Public Accounting



455.225 Disciplinary Proceedings for Each Board Shall Be Within the Jurisdiction of the Department

(1) (a) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has

violated a Florida statute, a rule of the department, or a rule of a board.

(b) When an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal

sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3) (a) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. A violation is a minor violation if it does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Each board, or the department if there is no board, shall establish by rule those violations which are minor violations under this provision. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(b) The department may issue a notice of noncompliance for an initial offense of a

minor violation, notwithstanding a board's failure to designate a particular minor violation by rule as provided in paragraph (a).

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of

probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The secretary may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department when there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department, for disciplinary cases under its jurisdiction, must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also

refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Professional Regulation Trust Fund. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Secretary of Business and Professional Regulation or his or her designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity

to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.--s. 1, ch. 74-57; s. 5, ch. 79-36; s. 289, ch. 81-259; s. 33, ch. 81-302; s. 12, ch. 83-329; s. 8, ch. 84-203; s. 3, ch. 85-311; s. 5, ch. 86-90; s. 8, ch. 88-1; s. 5, ch. 88-277; s. 1, ch. 88-279; s. 3, ch. 89-162; s. 1, ch. 90-44; s. 5, ch. 90-228; s. 7, ch. 91-137; s. 2, ch. 91-140; s. 54, ch. 92-33; s. 21, ch. 92-149; s. 132, ch. 92-279; s. 55, ch. 92-326; s. 23, ch. 93-129; s. 314, ch. 94-119; s. 79, ch. 94-218; s. 305, ch. 96-406; s. 211, ch. 96-410; s. 1082, ch. 97-103; s. 2, ch. 97-209; s. 3, ch. 97-228; s. 142, ch. 97-237; s. 21, ch. 97-261; s. 4, ch. 97-264; s. 18, ch. 97-273; s. 4, ch. 98-166; s. 31, ch. 2000-160. Note.--Former s. 455.013.

Disciplinary Actions by the Board

The departments and the boards also may cause disciplinary actions to be taken, penalties to be imposed, and to enforce their findings. Should the Board of Accountancy find any licensee guilty, it may enter an order imposing one or more of the following penalties:

- Denial of an application for licensure.
- Revocation or suspension of a license.

- Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
- Issuance of a reprimand.
- Placement of the licensee on probation for a period of time and subject to such conditions as the board may specify, including requiring the licensee to attend continuing education courses or to work under the supervision of another licensee.
- Restriction of the authorized scope of practice by the certified public accountant.

Real Life Examples

The Florida Board of Accountancy has enforced a range of disciplinary penalties as specified by 455.225, F.S. to Florida CPAs. Examples include:

Violation	Law/ Rule	Penalty
Found guilty by US District court for mail fraud, interstate transportation of stolen property, and money laundering while controller of a company.	473.323(1)(d) reporting crime; 455.227(1)(c)	Voluntary relinquishment of license
CPA and investment company owned did not have license to sell securities, and not registered as a securities broker or investment advisor. CPA never returned \$111,500 of short-term borrowings. Operated Ponzi scheme by falsely and fraudulently obtaining \$5.2 million from 116 investors and misdirecting \$1.8/ million to himself to pay for personal expenses. Operated investment firm with accounting practice to make it all work.	473.323(1)(g); 473.323(1)(k); 473.323(1)(l)	License revoked, \$10K fine
CPA failed to file tax return, client charged with interest	473.323(1)(g); 61H1-23.002(1)	License suspended
CPA convicted of grand theft; stole \$1.6M from client over four year period	455.227(1)(t), didn't report guilty finding to BOA	License revoked, sentenced to 15 years prison

455.227 Grounds for Discipline, Penalties and Enforcement

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

(b) Intentionally violating any rule adopted by the board or the department, as appropriate.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

(d) *(e) Removed laser and HIV sections; not applicable to ethics course.*

(f) Having a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(i) Failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.

(k) Failing to perform any statutory or legal obligation placed upon a licensee.

(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.

(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training,

experience, and authorization when required to perform them.

(q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

(r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.

(s) Failing to comply with the educational course requirements for domestic violence.

(t) Failing to report in writing to the board or, if there is no board, to the department within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction. A licensee must report a conviction, finding of guilt, plea, or adjudication entered before the effective date of this paragraph within 30 days after the effective date of this paragraph.

(u) Termination from a treatment program for impaired practitioners as described in s. 456.076 for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which

occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(3)(a) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time.

(b) In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing such fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a

civil action to recover, the fine or assessment.

(c) The department shall not issue or renew a license to any person against whom or business against which the board has assessed a fine, interest, or costs associated with investigation and prosecution until the person or business has paid in full such fine, interest, or costs associated with investigation and prosecution or until the person or business complies with or satisfies all terms and conditions of the final order.

(4) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this chapter, or any provision of law with respect to

professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.

(5) In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

History.--s. 5, ch. 79-36; s. 13, ch. 83-329; s. 5, ch. 88-380; s. 8, ch. 91-137; s. 55, ch. 92-33; s. 22, ch. 92-149; s. 23, ch. 93-129; s. 9, ch. 94-119; s. 80, ch. 94-218; s. 5, ch. 95-187; s. 22, ch. 97-261; s. 144, ch. 99-251; s. 32, ch. 2000-160; s. 2, ch. 2009-195; s. 12, ch. 2010-106.

473.323 Disciplinary proceedings.—

- (1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:
- (a) Violation of any provision of s. [455.227](#)(1) or any other provision of this chapter.
 - (b) Attempting to procure a license to practice public accounting by bribery or fraudulent misrepresentations.
 - (c) Having a license to practice public accounting revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
 - (d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of public accounting or the ability to practice public accounting.

- (e) Making or filing a report or record that the certified public accountant or firm knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those that are signed in the capacity of a certified public accountant.
- (f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
- (g) Committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of public accounting.
- (h) Violation of any rule adopted pursuant to this chapter or chapter 455.

- (i) Practicing on a revoked, suspended, inactive, or delinquent license.
 - (j) Suspension or revocation of the right to practice before any state or federal agency.
 - (k) Performance of any fraudulent act in any jurisdiction while holding a license to practice public accounting in this state or using practice privileges in this state.
 - (l) Failing to maintain a good moral character as provided in s. [473.308](#) while applying for licensure, or while licensed in this state or using practice privileges pursuant to s. [473.3141](#).
 - (m) Failing to provide any written disclosure to a client or the public which is required by this chapter or rule of the board.
 - (n) Having the same or equivalent practice privileges of a Florida certified public accountant or firm revoked, suspended, or otherwise acted against by the licensing authority of another state, territory, or country as a result of activity in that jurisdiction which would have subjected the Florida certified public accountant or firm to discipline in this state.
- (2) The board shall specify, by rule, what acts or omissions constitute a violation of subsection (1).
- (3) When the board finds any certified public accountant or firm guilty of any of the grounds set forth in subsection

- (1), it may enter an order imposing one or more of the following penalties:
- (a) Denial of an application for licensure.
 - (b) Revocation or suspension of the certified public accountant or firm's license or practice privileges in this state.
 - (c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
 - (d) Issuance of a reprimand.
 - (e) Placement of the certified public accountant on probation for a period of time and subject to such conditions as the board may specify, including requiring the certified public accountant to attend continuing education courses or to work under the supervision of another licensee.
 - (f) Restriction of the authorized scope of practice by the certified public accountant.
- (4) The department shall reissue the license of a disciplined licensee upon certification by the board that the disciplined licensee has complied with all of the terms and conditions set forth in the final order.

History.—ss. 21, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 8, 10, 11, ch. 85-9; s. 25, ch. 91-137; s. 4, ch. 91-429; s. 224, ch. 94-119; s. 4, ch. 94-151; s. 5, ch. 95-140; s. 3, ch. 96-261; s. 4, ch. 97-35; s. 117, ch. 98-166; s. 3, ch. 2000-154; s. 178, ch. 2000-160; s. 3, ch. 2008-81; s. 22, ch. 2009-54; s. 55, ch. 2009-195; s. 46, ch. 2010-106.

Grounds for Disciplinary Action

In summary are the general grounds for disciplinary action.

1. Violation of any provision of s. 455.227 (1) or any other provision of Chapter 473, Florida Statutes.

2. Attempting to procure a license to practice public accounting by bribery or fraudulent misrepresentations.
3. Having a license to practice public accounting revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.
4. Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of public accounting or the ability to practice public accounting.
5. Making or filing of a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those that are signed in the capacity of a certified public accountant.
6. Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
7. Committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of public accounting.
8. Violation of any rule adopted pursuant to this Chapter or Chapter 455.
9. Practicing on a revoked, suspended, inactive or delinquent license.
10. Suspension or revocation of the right to practice before any state or federal agency.
11. Performance of any fraudulent act while holding a license to practice public accounting.
12. Failing to maintain a good moral character as provided in s. 473.306.
13. Failing to provide any written disclosure to a client or the public which is required by this chapter or rule of the Board.

Real Life Examples

Unfortunately, some Florida CPAs have engaged in behavior that is a violation of 455.227, F.S. Examples of common law violations include:

Violation	Law/ Rule	Penalty
Florida CPA acted as an accountant for a business while his license was null and void; failed to later cooperate with Ethics Charging Authority.	455.227(1)(j) practice as unlicensed person	License revoked, \$5K fine, AICPA membership terminated
Charged with grand theft, altered checks intended for client, deposited into own bank account	473.033(1), 455.227(1)(f), failing to maintain good moral character, 473.308	Reprimand and suspension of license
Pleaded guilty to conspiracy to commit bank fraud; promoted herself as a CPA who could help get commercial lines of credit; prepared false applications; kept 10% of loan and also paid bank accomplice.	455.227(1)(t), didn't report guilty finding to BOA	Voluntarily relinquish license

Join FICPA and DBPR to Stop Unlicensed Activity

Each day, thousands of Florida-licensed CPAs work to serve their valued clients throughout the state. Having a license to practice is important – it means you’ve worked hard to demonstrate proficiency in your profession and you’ll abide by the standards outlined by Florida law.

The FICPA and the Florida Department of Business and Professional Regulation (DBPR) are working together to raise awareness of unlicensed public-accounting activity. You can help us educate the public about the importance of hiring only licensed professionals by downloading a web banner for your website. You also can join the FICPA and DBPR to get the word out through social-media tools such as Twitter and Facebook.

You can help us spread the word: Floridians can stand together to protect the safety of financial information and promote sound business practices by reporting suspected unlicensed activity to DBPR.

Please join us in our efforts to stop unlicensed activity and help us continue making Florida an incredible place to do business. To report unlicensed activity, call the DBPR unlicensed activity hotline at (866) 532-1440, or email cpa.complaints@dbpr.state.fl.us. You may also complete an online form.

Student Video Competition

In Fall 2012, DBPR and the FICPA teamed together to invite accounting students from throughout Florida to submit 30-second videos informing the public of unlicensed activity and the importance of using only a licensed CPA. The top three teams received prize money for their videos. The winning teams who also received cash awards for the team and for their college were:

- First Place: University of Florida Team Gazillo/Flynn
- Second Place: University of South Florida Team JJD
- Third Place: Nova Southeastern Team NSU Accounting Club

You can view the videos here:

<http://www.ficpa.org/Content/news/whatsnew/impostulators/Winners.aspx>

References

AICPA

Annual Report of AICPA Disciplinary Activity

<http://www.aicpa.org/interestareas/professionalethics/resources/ethicsenforcement/downloadabledocuments/annualreportofaicpadisciplinaryactivity.pdf>

DBPR Division of Certified Public Accounting, Florida Board of Accountancy

www.myflorida.com/dbpr/cpa

Statutory References

CHAPTER 455

BUSINESS AND PROFESSIONAL REGULATION: GENERAL PROVISIONS

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0455/0455.html

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| 455.01 | Definitions. |
| 455.017 | Applicability of this chapter. |
| 455.02 | Licensure of members of the Armed Forces in good standing and their spouses with administrative boards. |
| 455.10 | Restriction on requirement of citizenship. |
| 455.11 | Qualification of immigrants for examination to practice a licensed profession or occupation. |
| 455.116 | Regulation trust funds. |
| 455.1165 | Federal Grants Trust Fund. |
| 455.117 | Sale of services and information by department. |
| 455.201 | Professions and occupations regulated by department; legislative intent; requirements. |

- 455.203 Department; powers and duties.
- 455.2035 Rulemaking authority for professions not under a board.
- 455.204 Long-range policy planning; plans, reports, and recommendations.
- 455.205 Contacting boards through department.
- 455.207 Boards; organization; meetings; compensation and travel expenses.
- 455.208 Publication of information.
- 455.209 Accountability and liability of board members.
- 455.211 Board rules; final agency action; challenges.
- 455.212 Education; substituting demonstration of competency for clock-hour requirements.
- 455.2121 Education; accreditation.
- 455.2122 Education.
- 455.2123 Continuing education.
- 455.2124 Proration of or not requiring continuing education.
- 455.2125 Consultation with postsecondary education boards prior to adoption of changes to training requirements.
- 455.213 General licensing provisions.
- 455.214 Limited licenses.
- 455.217 Examinations.
- 455.2171 Use of professional testing services.
- 455.2175 Penalty for theft or reproduction of an examination.
- 455.2177 Monitoring of compliance with continuing education requirements.
- 455.2178 Continuing education providers.
- 455.2179 Continuing education provider and course approval; cease and desist orders.
- 455.218 Foreign-trained professionals; special examination and license provisions.
- 455.2185 Exemption for certain out-of-state or foreign professionals; limited practice permitted.
- 455.219 Fees; receipts; disposition; periodic management reports.
- 455.221 Legal and investigative services.
- 455.2228 Barbers and cosmetologists; instruction on HIV and AIDS.
- 455.223 Power to administer oaths, take depositions, and issue subpoenas.
- 455.2235 Mediation.
- 455.224 Authority to issue citations.
- 455.225 Disciplinary proceedings.
- 455.2255 Classification of disciplinary actions.
- 455.227 Grounds for discipline; penalties; enforcement.
- 455.2273 Disciplinary guidelines.
- 455.2274 Criminal proceedings against licensees; appearances by department representatives.
- 455.2275 Penalty for giving false information.
- 455.2277 Prosecution of criminal violations.
- 455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.
- 455.2281 Unlicensed activities; fees; disposition.

- 455.2285 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.
- 455.2286 Automated information system.
- 455.229 Public inspection of information required from applicants; exceptions; examination hearing.
- 455.232 Disclosure of confidential information.
- 455.24 Advertisement by a veterinarian of free or discounted services; required statement.
- 455.242 Veterinarians; disposition of records of deceased practitioners or practitioners relocating or terminating practice.
- 455.243 Authority to inspect.
- 455.245 Veterinarians; immediate suspension of license.
- 455.271 Inactive and delinquent status.
- 455.273 Renewal and cancellation notices.
- 455.275 Address of record.
- 455.32 Management Privatization Act.

Notes

CHAPTER 4

Assurance Provided by Regulation (Florida Statute 473)

Learning Objectives

The purpose of Chapter 4 is to review F.S. Chapter 473 and its present requirements for the practice of public accounting in Florida. The learning objectives for this chapter include:

1. Define the key terms that characterize public accounting in Florida per Chapter 473.302, Florida Statutes.
2. Explain the basic powers and duties of the Florida Board of Accountancy.
3. Explain the requirements to become a CPA licensed in Florida per Chapter 473.308, Florida Statutes.
4. Explain the requirements for a practice to become licensed in Florida per Chapter 473.309, Florida Statutes.
5. Name changes to a licensed firm that must be reported to the Florida Board of Accountancy per 61H1-26.004.
6. List the CPE requirements necessary to maintain a CPA license in Florida per Chapter 473.312, Florida Statutes.

Chapter Content

This chapter focuses on the practice of public accounting as outlined in Chapter 473, F.S. We will examine:

- Powers and duties of the Florida Board of Accountancy
- 473.308 Licensure of individuals
- 473.309 Practice Requirements
- Informing DBPR of address, firm and staff changes
- CPE Reporting
- Mobility
- Legislative updates

The Florida Statutes, Chapter 473, Public Accountancy, gives the public the assurance that the Legislature “*deems it necessary in the interest of public welfare to regulate the practice of public accountancy in this state.*”

To this end, the Legislature has created the Board of Accountancy and the Division of Certified Public Accounting. In Chapter 473, various definitions focus on what this means to the profession in Florida.

Chapter 473.302 defines the practice of public accounting through defining terms such as: board, department, division, certified public accountant, firm, home office, licensed audit firm, practice of public accounting, and uniform accountancy act.

New Definition, “Member in Business

The recent definition under AICPA ET section 92, *Definitions (AICPA, Professional Standards)* is intended to capture members who are not in the practice of public accounting.

.22 Member in business. A member employed or engaged on a contractual or volunteer basis in an executive, a staff, a governance, an advisory, or an administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, or regulatory or professional bodies. This does not include a member while engaged in the practice of public accounting. [Effective November 30, 2011]

Powers and Duties of the Board

In addition to establishing the Board of Accountancy and the Division of Certified Public Accounting, Chapter 473 also gives the Board certain powers and duties in the matters of:

- Fees
- Examinations
- Licensure
- Practice requirements
- Continuing education
- Other matters

473.305 Fees

The board, by rule, may establish fees to be paid for applications, examination, reexamination, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The fee for the examination shall be established at an amount that covers the costs for the procurement or development, administration, grading, and review of the examination. The fee for the examination is refundable if the applicant

is found to be ineligible to sit for the examination. The fee for initial application is nonrefundable, and the combined fees for application and examination may not exceed \$250 plus the actual per applicant cost to the department for purchase of the examination from the American Institute of Certified Public Accountants or a similar national organization. The biennial renewal fee may not exceed

\$250. The board may also establish, by rule, a reactivation fee, and a delinquency fee not to exceed \$50 for continuing professional education reporting forms. The board shall establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants. Fees shall be based

on department estimates of the revenue required to implement this chapter and the provisions of law with respect to the regulation of certified public accountants. *History.--ss. 4, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 2, 10, 11, ch. 85-9; s. 1, ch. 87-221; s. 22, ch. 88-205; s. 48, ch. 89-162; s. 20, ch. 89-374; s. 4, ch. 91-429; s. 6, ch. 2009-54; s. 2, ch. 2009-69; s. 13, ch. 2009-195.*

CPA Exam

Details regarding the CPA examination are covered in 473.306, FS. Depending on when you took the exam, the process may have changed. Please encourage and support your staff to sit for the exam and become a CPA. See the references at the end of the chapter for online resources regarding the exam. Basically, a candidate who wishes to become a CPA in Florida:

- Applies to sit and pays application fee through the Florida Board of Accountancy
- Must have 120 hours to sit; of these, 24 in upper level accounting and 24 in general business
- Must pass all four sections within an 18-month period
- Must have 150 hours to obtain their license; of these 36 in upper level accounting and 39 in general business
- Must have one year work experience under the direction of a CPA, clock starts once approved to sit for the exam

473.308 Licensure

(1) A person desiring to be licensed as a Florida certified public accountant in this state shall apply to the department for licensure, and the department shall license any applicant who the board certifies is qualified to practice public accounting.

(2) The board shall certify for licensure any applicant who successfully passes the licensure examination and satisfies the requirements of subsections (3), (4), and (5), and shall certify for licensure any firm that satisfies the requirements of ss. [473.309](#) and [473.3101](#). The board may refuse to certify any applicant or firm

that has violated any of the provisions of s. [473.322](#).

(3) An applicant for licensure must have at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university, with a concentration in accounting and business in the total educational program to the extent specified by the board.

(4)(a) An applicant for licensure after December 31, 2008, must show that he or she has had 1 year of work experience. This experience shall include providing any type of service or advice

involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, all of which must be verified by a certified public accountant who is licensed by a state or territory of the United States. This experience is acceptable if it was gained through employment in government, industry, academia, or public practice; constituted a substantial part of the applicant's duties; and was verified by a certified public accountant licensed by a state or territory of the United States. The board shall adopt rules specifying standards and providing for the review and approval of the work experience required by this section.

(b) However, an applicant who completed the requirements of subsection (3) on or before December 31, 2008, and who passes the licensure examination on or before June 30, 2010, is exempt from the requirements of this subsection.

(5) An applicant for licensure shall show that the applicant has good moral character.

(6)(a) "Good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The board may refuse to certify an applicant for failure to satisfy this requirement if:

1. The board finds a reasonable relationship between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and
2. The finding by the board of lack of good moral character is supported by competent substantial evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish to the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(a)1. Is not licensed and has not been licensed in another state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. [473.306](#); and

2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. [473.312](#), but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did

not meet the requirements of sub-subparagraph a.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. [473.306](#); or

c. Holds a valid license to practice public accounting issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. [473.306](#); and has met the requirements of this section for good moral character; and

2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.

(8) If the applicant has at least 5 years of experience in the practice of public accountancy in the United States or in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the

United States, or has at least 5 years of work experience that meets the requirements of subsection (4), the board shall waive the requirements of subsection (3) which are in excess of a baccalaureate degree. All experience that is used as a basis for waiving the requirements of subsection (3) must be while licensed as a certified public accountant by another state or territory of the United States or while licensed in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States. The board shall have the authority to establish the standards for experience that meet this requirement.

(9) The board may refuse to certify for licensure any applicant who is under investigation in another state for any act that would constitute a violation of this act or chapter 455, until such time as the investigation is complete and disciplinary proceedings have been terminated.

History.--ss. 7, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 4, 10, 11, ch. 85-9; s. 1, ch. 86-102; s. 21, ch. 89-374; s. 4, ch. 91-429; ss. 126, 223, ch. 94-119; s. 3, ch. 94-151; s. 347, ch. 97-103; s. 115, ch. 98-166; s. 4, ch. 98-340; s. 1, ch. 2000-114; s. 176, ch. 2000-160; s. 10, ch. 2000-332; s. 1, ch. 2004-87; s. 1, ch. 2007-139; s. 2, ch. 2008-81; s. 7, ch. 2009-54, ch. 2012-176.

Real Life Examples

Violation	Law/ Rule	Penalty
Florida CPA failed to file for an annual permit or register certificate within one year of	FS 473.323(1)(c) license revoked in another state	License revoked; \$1K fine

expiration in another state; received FL reciprocal license		
Florida CPA violated probation and carrying a concealed weapon	FS 473.323(1)(l) failing to maintain good moral character	Reprimand, probation for 1 year
Florida CPA committed wire fraud in conspiracy to defraud insurance companies	FS 473.323(1)(l) failing to maintain good moral character	Voluntary surrender of license

473.309 Practice Requirements for Partnerships, Corporations, and Limited Liability Companies; Business Entities Practicing Public Accounting

(1) A partnership may not engage in the practice of public accounting, as defined in s. 473.302(8)(a), unless:

(a) It is a form of partnership recognized by Florida law.

(b) Partners owning at least 51 percent of the financial interest and voting rights of the partnership are certified public accountants in some state. However, each partner who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) At least one general partner is a certified public accountant of this state and holds an active license or, in the case of a firm that must have a license pursuant to s. 473.3101(1)(a)2., at least one general partner is a certified public accountant in some state and meets the requirements of s. 473.3141(1)(a) or (b).

(d) All partners who are not certified public accountants in any state are engaged in the business of the partnership as their principal occupation.

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(f) It is currently licensed as required by s. 473.3101.

(2) A corporation may not engage in the practice of public accounting, as defined in s. 473.302(8)(a), unless:

(a) It is a corporation duly organized in this or some other state.

(b) Shareholders of the corporation owning at least 51 percent of the financial interest and voting rights of the corporation are certified public accountants in some state and are principally engaged in the business of the corporation. However, each shareholder who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) The principal officer of the corporation is a certified public accountant in some state.

(d) At least one shareholder of the corporation is a certified public accountant and holds an active license in this state or, in the case of a firm that must have a license pursuant to s. 473.3101(1)(a)2., at least one shareholder is a certified public accountant in some state and meets the requirements of s. 473.3141(1)(a) or (b).

(e) All shareholders who are not certified public accountants in any state are engaged in the business of the corporation as their principal occupation.

(f) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(g) It is currently licensed as required by s. 473.3101.

(3) A limited liability company may not engage in the practice of public accounting, as defined in s. 473.302(8)(a), unless:

(a) It is a limited liability company duly organized in this or some other state.

(b) Members of the limited liability company owning at least 51 percent of the financial interest and voting rights of the company are certified public accountants in some state. However, each member who is a certified public accountant in some state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) At least one member of the limited liability company is a certified public accountant and holds an active license in this state or, in the case of a firm that

must have a license pursuant to s. 473.3101(1)(a)2., at least one member is a certified public accountant in some state and meets the requirements of s. 473.3141(1)(a) or (b).

(d) All members who are not certified public accountants in any state are engaged in the business of the company as their principal occupation.

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(f) It is currently licensed as required by s. 473.3101.

(4) A partnership, corporation, limited liability company, or any other firm is engaged in the practice of public accounting if its employees are engaged in the practice of public accounting. Notwithstanding any other provision of law, a licensed audit firm may own all or part of another licensed audit firm.

History.--ss. 8, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 22, ch. 89-374; s. 4, ch. 91-429; s. 16, ch. 93-110; s. 1, ch. 93-284; s. 1, ch. 97-35; s. 5, ch. 98-340; s. 2, ch. 2000-114; s. 8, ch. 2009-54.

473.3101 Licensure of Sole Proprietors, Partnerships, Corporations, Limited Liability Companies, and Other Legal Entities

(1) Each sole proprietor, partnership, corporation, limited liability company, or any other firm seeking to engage in the practice of public accounting, as defined in s. 473.302(8)(a), in this state must file an application for licensure with the department and supply the information the board requires. An application must

be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.

(a) The following must hold a license issued under this section:

1. Any firm with an office in this state which uses the title "CPA," "CPA firm,"

or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting.

2. Any firm that does not have an office in this state but performs the services described in s. 473.3141(4) for a client having its home office in this state. The board shall define by rule what constitutes an office.

(b) A firm that is not subject to the requirements of subparagraph (a)2, may perform other professional services while using the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting in this state without a license issued under this section only if:

1. It performs such services through an individual with practice privileges granted under s. 473.3141; and
2. It can lawfully do so in the state where the individual with practice

privileges has his or her principal place of business.

(2) The board shall determine whether the sole proprietor, partnership, corporation, limited liability company, or any other firm meets the requirements for practice and, pending that determination, may certify to the department the partnership, corporation, or limited liability company for provisional licensure.

(3) Each license must be renewed every 2 years. Each sole proprietor, partnership, corporation, limited liability company, or any other firm licensed under this section must notify the department within 1 month after any change in the information contained in the application on which its license is based.

History.--ss. 9, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 17, ch. 93-110; s. 2, ch. 93-284; s. 6, ch. 98-340; s. 9, ch. 2009-54.

473.311 Renewal of License

CPAs must renew their individual license every two years

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

History.--ss. 11, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 5, 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 220, ch. 94-119; s. 116, ch. 98-166; s. 177, ch. 2000-160; s. 2, ch. 2004-87; s. 10, ch. 2009-54; s. 3, ch. 2009-69; s. 14, ch. 2009-195.

61H1-33.0065, Exemption from Renewal Requirements for Spouses of Members of the Armed Forces of the United States –

States that a Florida CPA who is the spouse of a member of the U.S. Armed Forces who is absent from the State of Florida because of the spouse's duties with the armed

forces is exempt from all licensure renewal provisions under these rules during the absence. They must show proof of the spouse's deployment and military status.

Informing DBPR of Address Changes

61H1-26.005 Address of Record.

(1) All Florida certified public accountants are required to have their correct street address on file with the Board office as their address of record. A post office box may be used for a mailing address, but it must be in addition to the address of record.

(2) Any time a Florida certified public accountant changes his/her address of record or mailing address, he/she must notify the Board office in writing within thirty days.

Informing DBPR of Firm Personnel Changes

61H1-26.004 Changes by Firms.

(1) A firm licensed pursuant to Rule 61H1-26.003, F.A.C., shall file a written notification with the Department within thirty (30) days after the occurrence of any of the following events:

- (a) The admission or addition of a non-CPA co-partner, shareholder or member in any Florida office, including whether any non-CPA co-partners, shareholders or members have convictions or findings of guilt, regardless of adjudication, of a crime in any jurisdiction; judgement or settlements or civil lawsuits; having been acted against, including denial of licensure, by any regulatory agency or by a court; and any other matters which show a lack of good moral character as defined in Section 473.308(6)(a), F.S.;
- (b) The admission or addition of a CPA co-partner, shareholder or member in any Florida office, including whether any CPA co-partners, shareholders or members have convictions or findings of guilt, regardless of adjudication, of a crime in any jurisdiction; judgment or settlements of civil lawsuits (excluding domestic matters); having the right to practice acted against, including denial of licensure, by the Securities Exchange

Commission (SEC), Internal Revenue Service (IRS), or any other regulatory agency or court; and any other matters which show a lack of good moral character as defined in Section 473.306(4)(a), F.S.;

- (c) The retirement or death of a co-partner, shareholder or member in any Florida office;
- (d) A change in the name of the partnership, corporation or limited liability company;
- (e) The termination of the partnership, corporation or limited liability company.
- (f) When the firm or any existing CPA or Non-CPA co-partner, shareholder or member has been the recipient of a conviction or finding of guilt, regardless of adjudication, of a crime in any jurisdiction; has been the subject of a judgment or settlements of a civil lawsuit (excluding domestic matters); has had the right to practice public accountancy acted against, including denial of licensure, by the Securities Exchange Commission (SEC), Internal Revenue Service (IRS), or any other regulatory agency or court; and any other matters which show a lack of good moral character as defined in Section 473.306(4)(a), F.S.

(2) In the event of the formation of a new partnership, corporation or limited liability company or a change in the name of a partnership, corporation or limited liability company, such partnership, corporation or limited liability company shall, within thirty (30) days of the event, become certified for licensure by the Board in accordance

with Rule 61H1-26.003, F.A.C., and pay the license fee required by subsections 61H1-31.001(5) and (6), F.A.C.

History.--New 12-4-79, Amended 2-3-81, Formerly 21A-26.04, Amended 6-4-86, Formerly 21A-26.004, Amended 11-3-97, 7-16-98, 8-17-98, 1-31-05, 8-28-06, 1-26-10.

Communicating with DBPR

Remember to provide the BOA with a change of address within 30 days. The BOA also requires a street address as the "address of record".

Check/ update your license periodically.

- Go to: www.MyFloridaLicense.com
- Choose *Renew a License* and follow the prompts. You will need to log onto the site. To login initially, use your license number and last four digits of your SSN.

Contact the BOA with your questions.

E-mail: callcenter@dbpr.state.fl.us

Customer Contact Center
Monday – Friday, 8 am to 5 pm EST
Phone: (850) 487-1395
Fax: (850) 921-6636

Florida Board of Accountancy
240 NW 76th Drive, Suite A; Gainesville, FL 32607
Fax: (352) 333-2508

CPE Reporting

DBPR no longer requires CPAs to report their CPE to DBPR. The Board of Accountancy has established an honor system for CPE reporting. Licensees affirm by way of the renewal notice that the necessary hours were completed and documentation is being retained for possible CPE audit.

The deadline is still June 30 of each renewal year. CPAs must still complete 80 hours of CPE, including 20 hours in accounting/auditing subjects and 4 in board-approved ethics. If you do not complete hours by June 30, the automatic extensions still apply.

61H1-33.003 Continuing Professional Education

(b) Florida certified public accountants who do not meet the requirements by June 30th will be granted an automatic extension until September 15th provided the Florida certified public accountant completes submits an additional 8 hours in Accounting and Auditing subjects. An automatic extension will be granted until December 31st provided the Florida certified public accountant completes submits an additional 16 hours in Accounting and Auditing subjects. ~~Florida certified public accountants utilizing the automatic extension must submit the required information postmarked or recorded on-line by September 15th or December 31st.~~

No changes to section (1)(a) and the remainder of this rule.

Real Life Example

Violation	Law/ Rule	Penalty
Florida CPA failed to provide verification of CPE courses completed with FICPA, was 36 hours short	473.323(1)(h); 61H1-33.003(1)	License suspended; \$1K fine

473.313 Inactive Status

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(2) A license that has become inactive under subsection (1) or for failure to complete the requirements in s. [473.312](#) may be reactivated under s. [473.311](#) upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The minimum continuing education requirements for reactivating a license shall be those prescribed by board rule and those of the most recent biennium plus one-half of the requirements in s. [473.312](#). Notwithstanding any other provision of

this section, the continuing education requirements are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent on June 30, 2012, if the Florida certified public accountant notifies the Board of Accountancy by December 31, 2012, of an intention to reactivate such a license and completes such reactivation by June 30, 2014.

(3) A license that has become delinquent for failure to report completion of the requirements in s. [473.312](#) may be reactivated under s. [473.311](#) upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification

by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. [473.311](#). If the license is delinquent on December 31 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(4) Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(5) Notwithstanding the provisions of s. [455.271](#), the board may, at its discretion, reinstate the license of an individual whose license has become null and void

if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

History.--ss. 12, 25, ch. 79-202; s. 346, ch. 81-259; ss. 17, 18, ch. 81-302; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 53, ch. 83-329; ss. 7, 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 221, ch. 94-119; s. 348, ch. 97-103; s. 8, ch. 98-340; s. 5, ch. 2001-269; s. 12, ch. 2009-54; s. 4, ch. 2009-69; s. 15, ch. 2009-195; s. 2, ch. 2012-176.

61H1-33.006 – A Florida CPA who has requested inactive status or became delinquent who desires to become an active Florida certified public accountant can apply for reactivation by completing DBPR 0010-2 – Master Individual Application and DBPR CPA 5011-1 – Request for Change of Status. Each application should show the completion of the required CPE hours – one reporting period (120 hours); two reporting periods (200 hours); three or more reporting periods (280 hours).

Mobility

Mobility (also know as “practice mobility”) is the ability of a licensed CPA to gain a practice privilege outside of their home state without getting an additional license in another state where they will be serving a client. This ability has become increasingly important as CPAs are conducting business across state borders every day.

In the end, State Boards of Accountancy will gain automatic jurisdiction over all CPAs practicing in their states whether they are licensed or registered in their state.

To date, 49 states (Hawaii pending) have adopted mobility legislation. In 2007 only four states had passed mobility provisions.

CPAMobility.org provides helpful information, updated regularly, on state practice privilege requirements for CPAs, commonly referred to as “mobility” laws, for all 50

states and five U.S jurisdictions. The useful tool for practitioners is a joint project between NASBA and the AICPA.

CPA Mobility Tool

The AICPA and National Association of State Boards of Accountancy (NASBA) have developed a free online tool to help CPAs and accounting firms around the country understand the implications of CPA Mobility and answer the common question “Does Mobility apply to me?” The tool, located at CPAMobility.org, focuses on services that are most likely to trigger a firm registration requirement in a target state.

473.314 Temporary License

(1) The board shall adopt rules providing for the issuance of temporary licenses to certified public accountants or firms of other states who do not meet the requirements of s. 473.3141, for the purpose of enabling them or their employees to perform specific engagements involving the practice of public accountancy in this state. No temporary license shall be valid for more than 90 days after its issuance, and no license shall cover more than one engagement. After the expiration of 90 days, a new license shall be required.

(2) Each application for a temporary license shall state the names of all persons who are to enter this state and shall be accompanied by a fee in an amount established by the board not to exceed \$400.

(3) A temporary license shall not be required of certified public accountants or firms entering this state solely for the purpose of preparing federal tax returns or advising as to federal tax matters if they do not use the title "CPA," "CPA

firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that the certified public accountants or firms are authorized to practice public accounting. To use such terms in this state, certified public accountants or firms from other states must comply with the provisions of this section or s. 473.3141.

(4) Upon certification of the applicant by the board, the department shall issue a temporary license to the applicant.

(5) The application for a temporary license shall constitute the appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with, or incidental to, the practice of public accounting for which the temporary license was issued.

History.--ss. 13, 25, ch. 79-202; s. 347, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 24, ch. 91-137; s. 4, ch. 91-429; s. 13, ch. 2009-54.

473.3141 Certified Public Accountants Licensed in Other States

(1) Except as otherwise provided in this chapter, an individual who does not have

an office in this state has the privileges of Florida certified public accountants and

may provide public accounting services in this state without obtaining a license under this chapter or notifying or registering with the board or paying a fee if the individual:

(a) Holds a valid license as a certified public accountant from a state that the board or its designee has determined by rule to have adopted standards that are substantially equivalent to the certificate requirements in s. 5 of the Uniform Accountancy Act in the issuance of licenses; or

(b) Holds a valid license as a certified public accountant from a state that has not been approved by the board as having adopted standards in substantial equivalence with s. 5 of the Uniform Accountancy Act, but obtains verification from the board, or its designee, as determined by rule, that the individual's certified public accountant qualifications are substantially equivalent to the certificate requirements in s. 5 of the Uniform Accountancy Act.

The board shall define by rule what constitutes an office.

(2) Except as otherwise provided in this chapter, an individual who qualifies to practice under this section may offer or provide services in this state in person, by mail, by telephone, or by electronic means, and a notice, fee, or other submission is not required.

(3) An individual certified public accountant from another state who practices pursuant to this section, and the firm that employs that individual, shall both consent, as a condition of the privilege of practicing in this state:

(a) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) To comply with this chapter and the applicable board rules;

(c) That if the license as a certified public accountant from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering public accounting services in this state, individually and on behalf of a firm; and

(d) To the appointment of the state board that issued the individual's license as the agent upon whom process may be served in any action or proceeding by the board or department against the individual or firm.

(4) An individual who qualifies to practice under this section may perform the services identified in s. [473.302\(8\)\(a\)](#) only through a firm that has obtained a license issued under s. [473.3101](#) or is authorized by s. [473.3101](#) to provide such services.

¹(5) Disciplinary action against an individual or firm that practices pursuant to this section is not valid unless, prior to the entry of a final order, the agency has served, by personal service pursuant to this chapter or chapter 48 or by certified mail, an administrative complaint that provides reasonable notice to the individual or firm of facts or conduct that warrants the intended action and unless the individual or firm has been given an adequate opportunity to request a proceeding pursuant to ss. [120.569](#) and [120.57](#)

History.--s. 14, ch. 2009-54; s. 16, ch. 2012-212.

Discussion Points

4.1 Mobility

- What is mobility?
- What is a temporary license?
- How does mobility apply/work in Florida?
- What is the process of working in another state?

2012 Legislative Changes “Accountancy Bill”

Of the 2,052 bills that were filed during the 2012 Legislative Session, only 292 passed both chambers (and even fewer were signed into law). On April 27, Gov. Rick Scott signed CS/CS/HB 769 into law. Senate Bill 1656 (SB 1656) was sponsored by Sen. Jack Latvala, R-St. Petersburg, and its House companion Bill 769 (HB 769) was sponsored by Rep. Clay Ford, R-Pensacola.

Together, the Legislation streamlines licensure and renewal requirements set forth in Chapter 473. One of several significant requirement changes relates to amnesty and license reactivation. The changes became effective July 1, 2012.

Here is a summary of five streamlining actions:

- Amends 473.308(4), F.S., to allow CPAs to obtain the one-year work experience licensure requirement through verification by another CPA, versus direct supervision of a CPA (current law).
- Streamlines the licensure-by-endorsement requirements, as set forth in 473.308(7), F.S., for CPAs who have held a license in another state for at least 10 years prior to application.
- Creates a one-time amnesty to reactivate a license by allowing CPAs to notify the Board of Accountancy (BOA) of their intention by Dec. 31, 2012, and complete 120 hours of continuing professional education (CPE) by June 30, 2014.
- Amends 473.313(3), F.S., by creating a 75-day window to submit a renewal application, without having to apply for reactivation, for licensees who had completed the required CPE by Dec. 31, but failed to report.
- Provides for a Board of Accountancy (BOA) report to the Legislature on the potential cost savings of privatizing or outsourcing some Board functions.

The Board of Accountancy will need to promulgate rules for some of the provisions found in CS/CS/HB 769, and the FICPA will update our members on the specific statute and rule changes affecting the profession.

For more information about legislative or regulatory issues:

FICPA Director of Governmental Affairs
(800) 342-3197, Ext. 203 (in Florida)
govaffairs@ficpa.org

References

Mobility

Practice requirements of other states
www.CPAMobility.org

CPA mobility resources
<http://www.aicpa.org/ADVOCACY/STATE/MOBILITY/Pages/default.aspx>

CPA mobility tool
<http://www.cpamobility.org>

Uniform CPA Exam

State licensure regulations from the National Association of State Boards of Accountancy
www.nasba.org/exams/cpaexam
<http://www.nasba.org/exams/cpaexam/>

Uniform CPA Exam
www.cpa-exam.org

Florida Requirements
<http://www.myfloridalicense.com/dbpr/cpa/exam.html>

Accounting graduates and young professionals
www.thiswaytocpa.com

Student and professional members
www.ficpa.org

Statutory References

CHAPTER 473

PUBLIC ACCOUNTANCY

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0400-0499/0473/0473ContentsIndex.html

- 473.301 Purpose.
- 473.302 Definitions.
- 473.303 Board of Accountancy.
- 473.3035 Division of Certified Public Accounting.
- 473.304 Rules of board; powers and duties; legal services.
- 473.305 Fees.
- 473.306 Examinations.
- 473.3065 Certified Public Accountant Education Minority Assistance Program; advisory council.
- 473.308 Licensure.
- 473.309 Practice requirements for partnerships, corporations, and limited liability companies; business entities practicing public accounting.
- 473.3101 Licensure of sole proprietors, partnerships, corporations, limited liability companies, and other legal entities.
- 473.311 Renewal of license.
- 473.312 Continuing education.
- 473.313 Inactive status.
- 473.314 Temporary license.
- 473.3141 Certified public accountants licensed in other states.
- 473.315 Independence, technical standards.
- 473.316 Communications between the accountant and client privileged.
- 473.318 Ownership of working papers.
- 473.319 Contingent fees.
- 473.3205 Commissions or referral fees.
- 473.321 Fictitious names.
- 473.322 Prohibitions; penalties.
- 473.323 Disciplinary proceedings.

Notes

CHAPTER 5

Ethics of Integrity, Objectivity, Commissions, Contingencies, and Communications (FAC 61H1)

Learning Objectives

The purpose of Chapter 5 is to discuss the implications of the Florida Administrative Code, Section 61H1 as it pertains to public accounting in Florida to examine commissions, contingencies, and communications. The learning objectives for this chapter are:

1. Define the term “Objectivity” as it relates to the practice of public accounting.
2. Define the term “Integrity” as it relates to the practice of public accounting.
3. Describe the concept of “materiality” as defined by FASB No. 2, *Qualitative Characteristics of Accounting Information*.
4. Describe the situations when commissions or referral fees are allowed per Florida rule 61H1-21.003.
5. Explain Florida’s rule 61H1-21.006 for communicating with another client.

Chapter Content

This chapter focuses on the practice of public accounting as outlined in Rule 61H1. We will examine:

- 61H1-21.002 Integrity and Objectivity
- Conflicts of Interest
- Materiality
- 61H1-21.003 Commissions or Referral Fees
- 61H1-21.005 Contingent Fees
- 61H1-21.006 Communication with Client of Another Licensee

Comparison of Florida Rule to National Standards

In F.A.C., Section 61H1-21.002 indicates that the ethical standards of integrity and objectivity shall be adhered to by Florida licensees by not doing the following:

1. Knowingly misrepresent facts

2. Subordinating their judgment to others including:
 - a. Clients
 - b. Employers
 - c. Other third parties
3. Further, in tax practice a CPA may resolve doubt in favor of their client if there is reasonable support for their position.

61H1-21.002 Integrity and Objectivity

A certified public accountant shall not knowingly misrepresent facts, and, when engaged in the practice of public accounting, shall not subordinate his judgment to others including but not limited to clients, employers or other third parties. In tax practice, a certified public accountant may resolve doubt in

favor of his client as long as there is reasonable support for his/her position.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History—New 12-4-79, Formerly 21A-21.02, Amended 6-4-86, Formerly 21A-21.02, 21A-21.002, Amended 12-10-09.

Florida vs. National Ethics Standards

Most of the Florida Ethical Standards have their basis in the AICPA's Ethical Standards. This is particularly true regarding Section 102, *Integrity and Objectivity*, of the AICPA's *Code of Professional Conduct*.

Definitions of Integrity and Objectivity

While integrity and objectivity are hard to precisely define, there are several key words that describe integrity. These include:

- Being candid
- Being honest
- Doing the right thing
- Acting in good faith
- Placing service and public trust above personal advantage and personal gain
- Observing both form and spirit of professional standards

In the AICPA's description of integrity (from ET 54, Article III, Integrity, .02), the following sentence stands out.

“Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle.”

From the AICPA - Section 102, Integrity and Objectivity

The AICPA has ET §102.01 Rule 102, Integrity and Objectivity.

In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

If a member acts in the following way, they shall be considered to have knowingly misrepresented facts in direct violation of Rule 102:

- Makes, or permits or directs another to make, materially false and misleading entries in an entity's financial statements or records.
- Fails to correct materially false and misleading financial statements or records when they have the authority to do so.
- When a document containing materially false or misleading information is signed or permitted to sign or directs another to sign.

Conflicts of Interest

Under ET Section 102-2, the AICPA rule indicates that:

A conflict of interest may occur if a member performs a professional service for a client or employer and the member or his or her firm has a relationship with another person, entity, product, or service that could, in the member's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the member's objectivity.

The AICPA also provides a series of examples of situations that may create a conflict of interest:

- A member has been asked to perform litigation services for the plaintiff in connection with a lawsuit filed against a client of the member's firm.
- A member has provided tax or personal financial planning (PFP) services for a married couple who are undergoing a divorce, and the member has been asked to provide the services for both parties during the divorce proceedings.
- In connection with a PFP engagement, a member plans to suggest that the client invest in a business in which he or she has a financial interest.
- A member provides tax or PFP services for several members of a family who may have opposing interests.
- A member has a significant financial interest, is a member of management, or is in a position of influence in a company that is a major competitor of a client for which the member performs management consulting services.

- A member serves on a city's board of tax appeals, which considers matters involving several of the member's tax clients.
- A member has been approached to provide services in connection with the purchase of real estate from a client of the member's firm.
- A member refers a PFP or tax client to an insurance broker or other service provider, which refers clients to the member under an exclusive arrangement to do so.
- A member recommends or refers a client to a service bureau in which the member or partner(s) in the member's firm hold material financial interest

Obligations of a Member to His or Her Employer's External Accountant

Rule 102-3 indicates that a member must:

"...maintain objectivity and integrity in the performance of a professional service. In dealing with his or her employer's external accountant, a member must be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts. This would include, for example, responding to specific inquiries for which his or her employer's external accountant requests written representation."

Impairment of Objectivity or Integrity Involving Gifts or Entertainment

Rule 102, Ethics Ruling No. 113 -- Acceptance or Offering of Gifts or Entertainment

.226 Question — Would objectivity or integrity be considered to be impaired if a member offers or accepts gifts or entertainment to or from a client (or an individual in a key position with a client or an individual owning 10 percent or more of the client's outstanding equity securities or other ownership interests), or a customer or vendor of the member's employer (or a representative of the customer or vendor)?

.227 Answer — Objectivity would be considered to be impaired unless the gift or entertainment is reasonable in the circumstances.

The member should exercise judgment in determining whether gifts or entertainment would be considered

reasonable in the circumstances.

Relevant facts and circumstances would include, but are not limited to:

- The nature of the gift or entertainment
- The occasion giving rise to the gift or entertainment
- The cost or value of the gift or entertainment
- The nature, frequency, and value of other gifts and entertainment offered or accepted
- Whether the entertainment was associated with the active conduct of business either directly before, during, or after the entertainment
- Whether other clients, customers, or vendors also participated in the entertainment

- The individuals from the client, customer, or vendor and the member's firm or employer who participated in the entertainment

In addition, a member would be presumed to lack integrity if he or she accepted or offered gifts or entertainment that he or she knew or was reckless in not knowing would violate the member, client, customer, or vendor's policies or applicable laws and regulations.

Materiality – A Key Concept

What is it?

- Materiality is defined by the Financial Accounting Standards Board Statement of Financial Accounting Concepts No. 2, *Qualitative Characteristics of Accounting Information*.
- May be either or both quantitative and qualitative.
- *“Magnitude of an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would change or be influenced”.*
- Has been defined in FASB, AICPA, SEC, and PCAOB documents.

So if the definitions are everywhere, what is the problem?

- **There is no authoritative formulation of materiality in the law or accounting literature.**
- May be quite small numerically.
- Must be considered quantitatively and qualitatively.
- Most GAAP statements involve a consideration of materiality.
- Most auditing standards involve a consideration of materiality.

Commissions and Referral Fees

Section 61H1-21.003 is concerned with commissions or referral fees. Commissions or referral fees are prohibited with:

- Audit
- Review
- Compilation
- Prospective financial data
- Services resulting in an expression of opinion

In any engagement in which there is to be commission, the CPA must have an engagement letter signed by the client prior to beginning the engagement. The letter must indicate a complete disclosure for the compensation.

The CPA must have all required licenses. Further, independence must be disclosed in the engagement letter.

61H1-21.003 Commissions or Referral Fees

(1) A certified public accountant shall not pay or accept a commission or referral fee in connection with the sale of a product or referral of any services as defined in Section 473.302(7)(a), F.S., or prohibited to non-certified public accountants as listed in Section 473.322, F.S.

These services include:

(a) Audit, review, or compilation services.

(b) Services for any prospective financial data including forecasts or projections.

(c) Any special procedures engagement resulting in an expression of an opinion when the services fall within the definitions as set forth in Section 473.302(8)(a) and (c) and Section 473.322, F.S.

(2) The certified public accountant must have an engagement letter signed by the client prior to beginning any engagement for which the certified public accountant will receive a commission. The letter

must include complete details of the financial arrangements involving compensation for the services rendered.

(3) The certified public accountant must hold appropriate licenses as required.

(4) If the certified public accountant is not independent as described in Rule 61H1-21.001, F.A.C., it must be disclosed in the engagement letter. However, if the only reason for not being independent is the fact that the certified public accountant is being compensated by a commission or contingent fee then the lack of independence does not have to be disclosed.

Specific Authority 473.304, 473.3205 FS. Law Implemented 473.3205 FS. History– New 12-4-79, Formerly 21A-21.03, Amended 3-28-89 Formerly 21A-21.003, Amended 2-23-98, 8-16-99, 12-21-09.

Contingent Fees

Contingent fees may be accepted only for those fees for which contingent fees are allowed. When a tax related filing with the federal, state, or local government occurs, a contingent fee will only be allowed on findings of the government and not the licensee.

There are some exceptions in the F.A.C. regarding contingent fees such as when the taxing authority has begun an audit. Fees fixed by courts or public authorities will not be regarded as contingent when they are of an indeterminate amount.

61H1-21.005 Contingent Fees

(1) No certified public accountant or firm shall accept a fee contingent upon the findings or results of such services if the service is of the type for which a commission or referral fee could not be accepted (See Rule 61H1-21.003, F.A.C.).

(2) No certified public accountant or firm shall accept a contingent fee for tax filings with the federal, state, or local government unless the findings are those of the tax authorities and not those of the licensee. Unless the certified public accountant or firm has specific reason to know that the filing will be reviewed in detail by the taxing authorities, the findings will be presumed to be those of the certified public accountant or firm and a contingent fee is not permissible. An original or amended federal tax return or a claim for refund cannot be prepared for a contingent fee since the

findings are not considered to be those of the taxing authority. If the taxing authority has begun an audit, any findings will be considered those of the taxing authority and a contingent fee may be accepted. Fees to be fixed by courts or other public authorities, which are of an indeterminate amount at the time a public accounting service is undertaken, shall not be regarded as contingent fees for the purposes of this rule. However, a certified public accountant's or firm's fee may vary depending, for example, on the complexity of the service rendered.

Specific Authority 473.304, 473.319 FS, s. 2, Chapter 97-35, Laws of Florida. Law Implemented 473.319 FS., s. 2, Chapter 97-35, Laws of Florida. History–New 12-4-79, Formerly 21A-21.05, 21A-21.005, Amended 11-30-93, 2-23-98, 16-10-09.

Communication with Client of Another Licensee

There are also rules for communicating with the client of another licensee.

61H1-21.006 Communication with Client of Another Licensee

If a client of one certified public accountant or firm requests a second certified public accountant or firm to provide professional advice on accounting or auditing matters in connection with an expression of opinion, the second certified public accountant or firm must consult with the first certified public accountant or firm, after obtaining

the client's consent, to make certain that the (second certified public accountant or firm) is aware of all the relevant facts.

Specific Authority 473.304, 473.315 FS. Law Implemented 473.315 FS. History–New 12-4-79, Amended 2-3-81, Formerly 21A-21.06, 21A-21.006, amended 12-10-09.

Case Study

Case Study – Sales and Use Tax

John and Jane Doe of Doe & Doe, P. A. were performing an annual audit of the XYZ Testing Company of Florida, Inc., (the Company), a small privately held manufacturing corporation. This was the first year that the company had ever undergone an audit. The audit was requested as part of a bank requirement for potential borrowings for expansion. The company has been in existence for 5 years, has a balance sheet of approximately \$20,000,000 of total assets, and has shown promising growth and profitability on previous unaudited financial statements.

The audit was progressing nicely. John Doe was auditing the Company's property and equipment accounts and noticed that the equipment account had increased by \$1,000,000 over the prior year. He noticed a purchase reflected in February of the audit year and investigated. He found an invoice from Indiana Testing Company, Inc. in Indianapolis, Indiana, and pulled it for testing. The invoice appeared correct in every detail and tied to the Company's transaction listings where it had been paid by company check. John thought that this was a "tic and tie" situation and a straightforward transaction. After replacing the invoice and completing the work paper details, he remembered something about the invoice. He pulled the invoice again and immediately noticed that the equipment had been delivered to their site in Florida, there were no special exemptions at play, but there was no Florida sales tax stated on the invoice. John determined that there should have been a Florida sales tax paid or accrued.

He tested the Company's monthly Sales and Use Tax Reports that had been filed timely. There was no evidence that any Florida sales or use tax on the equipment acquisition for \$1,000,000 had ever been accrued, reported, or paid. The county in Florida where the purchase transaction had occurred has a sales tax rate of 7 percent. The sales and use tax calculation indicated a tax due of over \$70,000 on the purchase. John was able to determine that the amount had never been accrued or paid.

John went to the Company's President and informed him of the situation. The President said, "We did very well, didn't we? We had our own truck pick up the equipment in Indianapolis and bring it into our plant in Florida over the back roads in Georgia. We saved over \$70,000 in sales tax. Good, smart management, right?"

John immediately conferred with his sister Jane on the situation. They raised the following questions:

1. How do the standards of integrity and objectivity apply here?
2. Were the auditors under any obligations to find and locate unpaid sales tax?

3. Was the amount due considered material?
4. Was the omission considered a misstatement?
5. Was the omission an illegal act?
6. What are the auditor's obligations under professional standards?
7. What should the auditors do about their finding?
8. The above situation may come to the attention of the Company's Chief Financial Officer before it ever goes to the Company's CEO. What are the considerations should this occur? How do the questions above change when the CFO is involved?

How would you respond?

(See answers at end of this chapter.)

References

AICPA

ET Section 54 - Article III - Integrity

http://www.aicpa.org/research/standards/codeofconduct/pages/et_54.aspx

ET Section 102 - Integrity and Objectivity

http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/et_102.aspx

113. Acceptance or Offering of Gifts or Entertainment

http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/et_191.aspx#et_191_ruling_113

Financial Accounting Standards Board

<http://www.fasb.org>

Statutory References

RULE 61H1 : BOARD OF ACCOUNTANCY

<https://www.flrules.org/Gateway/Division.asp?DivID=280>

Chapter No.	Chapter Title
61H1-19	Purpose, Organization, Rulemaking Proceedings, Etc.
61H1-20	Definitions
61H1-21	Independence, Integrity, Etc.

61H1-22	Competence and Technical Standards
61H1-23	Responsibilities to Clients
61H1-24	Advertising
61H1-25	Responsibility for Other Persons
61H1-26	Names, Terms, Branch Offices
61H1-27	Educational and Experience Requirements
61H1-28	Examinations
61H1-29	Licensure by Endorsement
61H1-31	Fees
61H1-32	Probable Cause Panel
61H1-33	Reestablishment of Professional Knowledge and Competency
61H1-34	Persons Other Than Certified Public Accountants
61H1-35	Foreign Licensure Examination
61H1-36	Discipline
61H1-37	Reinstatement
61H1-38	Certified Public Accountant Education Minority Assistance Program

Case Study - Answers

The answers presented here are for discussion purposes only. Situations vary, responses vary, and the independent auditor may be faced with other unusual circumstances which could influence an answer. This case is not intended to present all possible or probable occurrences.

- (1) The bullet points made on Section 102, Integrity and Objectivity indicate the following. If a member acts in the following way, they shall be considered to have knowingly misrepresented facts in direct violation of Rule 102:
- Makes, or permits or directs another to make, materially false and misleading entries in an entity's financial statements or records
 - Fails to correct materially false and misleading financial statements or records when they have the authority to do so.
 - When a document containing materially false or misleading information is signed or permitted to sign or directs another to sign.

In one way or another, all of the bullet points above may be applicable.

- (2) The auditors were not under any obligation to find and locate unpaid sales tax. However, when they discovered the unpaid amount, they did have a responsibility to detect "material misstatements" in accordance with SAS 99, "Consideration of Fraud..."

- (3) The amount would be material. This is due to the amount and the fact that the Company was not in compliance with sales or use tax law in Florida which will constitute an illegal act on adjudication.
- (4) The omission of the sales or use tax based on the liabilities being correctly stated and all costs being capitalized into the equipment account would constitute a GAAP departure and therefore represent a misstatement.
- (5) According to the Florida Department of Revenue, the omission of either a sales or use tax would be considered a criminal act.
- (6) The auditor is responsible for detecting material misstatements under SAS 99. However, the auditor may only recommend adjusting or correcting entries to management's financial statements. It is management's responsibility to actually record or post the proposed entries. If management refuses to record the AJE, the auditor has limited options available. First, the auditor may qualify the opinion in the audit report. Second, the auditor may withdraw from the engagement as a last resort. If management refuses to consider the adjustment, the auditor should consider also management's integrity and honesty in regards to the engagement.
- (7) Under most considerations, the auditor is under no responsibility to notify any other agencies of the situation. However, in some situations, the auditor may be required to notify other authorities. These might be the case in some governmental audits or audits where it is a state requirement to notify an agency of problems.
- (8) When the CFO of the Company is the first to be notified of the problem, the CFO may have the same ethics implications of the independent auditor, if the CFO is a CPA. The CFO may also have serious considerations for continued employment if management refuses to consider the adjustments.

Notes

CHAPTER 6

Competency and Related Issues

Learning Objectives

The purpose of Chapter 6 is to review the idea of competency and its effect on public accounting. The learning objectives for this chapter are:

1. Describe the four general standards of competence listed in 61H1-22.001.
2. Apply standards of documentation to the performance of audits, reviews, and compilations.
3. Describe the purpose of the Clarity Project.
4. Review new amendments to the Code of Professional Conduct ethics interpretations and rulings.

Chapter Content

F.A.C. Chapter 61H1-22 deals with general competence and other technical standards. The general standards are set out in Chapter 61H1-22.001. This section requires the licensee to comply with the general standards which include:

1. Professional competence – Undertake only those engagements reasonably expected to be completed
2. Due professional care
3. Planning and supervision – adequately plan and supervise
4. Sufficient relevant data – data for a reasonable basis for a conclusion or recommendations

61H1-22.001 Competence (General Standards)

A certified public accountant shall comply with the following general standards and must justify any departures there from:

(1) Professional competence. A certified public accountant shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence. A certified

public accountant must be in charge of all public accounting services performed by the firm.

(2) Due professional care. A certified public accountant shall exercise due professional care in the performance of an engagement.

(3) Planning and supervision. A certified public accountant shall adequately plan and supervise an engagement.

History—New 12-4-79, Amended 2-3-81, Formerly 21A-22.01 21A-22.001, Amended 12-30-97, 12-10-09.

(4) Sufficient relevant data. A certified public accountant shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

Professional Competence

- Agreement to perform implies that the member has necessary competence to complete the engagement.
- Member does not assume a responsibility for infallibility of knowledge or judgment.
- Competence involves both member and staff.

Due Professional Care

- Assumes the person offering services will possess the “degree of skill commonly possessed” by other persons as described in Cooley on Torts, a legal treatise.
- Further assumes the person should exercise that skill with “reasonable care and diligence.”
- Such as, “due professional care”

Planning and Supervision

Adequately plan and supervise the performance of professional services.

Sufficient Relevant Data

Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Interpretations under AICPA Rule 201 - General Standards

General Standard. - .02 201-1—Competence

A member's agreement to perform professional services implies that the member has the necessary competence to complete those professional services according to professional standards, applying his or her knowledge and skill with reasonable care and diligence, but the member does not assume a responsibility for infallibility of knowledge or judgment.

Competence to perform professional services involves both the technical qualifications of the member and the member's staff and the ability to supervise and evaluate the quality of the work performed. Competence relates both to knowledge of the profession's standards, techniques and the technical subject matter involved, and to the capability to exercise sound judgment in applying such knowledge in the performance of professional services.

The member may have the knowledge required to complete the services in accordance with professional standards prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services. This does not ordinarily represent a lack of competence, but rather is a normal part of the performance of professional services.

However, if a member is unable to gain sufficient competence through these means, the member should suggest, in fairness to the client and the public, the engagement of someone competent to perform the needed professional service, either independently or as an associate.

Real Life Examples

Violation	Law/ Rule	Penalty
Florida CPA prepared 32 prospective financial statements for health care clinics seeking licensure; used canned statements, no engagement letters, reports not on letterhead, report signer not a CPA, reports didn't follow GAAP, no understanding of services to be performed with client.	Did not follow SSAE or other f/s standards, AT 301.69(5)(i), 473.323(1)(g); committing act of fraud, deceit, incompetence, negligence, FAC 61H1-22.002; FAC 61H1-22.001(2)	Reprimand; probation for 1 year
Florida CPA performed audit of financial statements; failed to perform sufficient audit procedures, didn't consolidate f/s of an entity he had 90% interest in; failed to address departures from GAAP; PCAOB initiated disciplinary proceedings	473.323(1)(g); 473.323(1)(j)	On probation; suspended for practice before the SEC
Florida CPA failed to perform services it was engaged to perform. Billed client for filing	FS 473.323(1)(g); 61H1-23.002	License suspended

income taxes but never filed them. Didn't return client information. Abruptly closed office. BOA unable to reach him.		
Florida CPA hired as personal representative to an estate, allowed to borrow money against estate which he inappropriately did for \$55K; made errors in work caused by reaction to medication; failed to provide accounting of estate and trust, no documentation to beneficiaries	473.323(1)(g); 473.323(1)(m) failed to provide written disclosure	License suspended for 1 year, then probation for 2 years; \$1K fine; 8 hours of CPE; mandatory peer review
Florida CPA not authorized to write personal checks from client's account; wrote dozens of checks to himself and his wife for total of \$260K; guilty of scheme to defraud client	473.323(1)(g); 473.323(1)(l); 473.323(1)(d)	License revoked
Florida CPA did not prepare or file 990 for a civic organization for 4 years; failed to perform services it was engaged to perform; failed to notify client that non-compliance penalties could result	473.323(1), 455.227(1)(f), 473.323(1)(g); committing act of fraud, deceit, incompetence, negligence	Reprimand, one year probation

Hindsight Judgment

Hindsight is often how the CPA will be judged. The CPA will be judged in almost all situations for compliance with the ethical standards such as professional competence, due professional care, planning and supervision, and sufficient relevant data based on hindsight. So often these standards may only be judged after the situation has occurred.

Rather than being asked, “*do you ...*” or “*will you ...*”
Those judging us will tend to ask, “*did you ...*” or “*will you...*”.

Judgment Protection

It has been often said that the three most important things in real estate are:

1. Location

2. Location
3. Location

For protection from hindsight judgments, the three most important things are:

1. **Documentation**
2. **Documentation**
3. **Documentation!**

There are only a few means available to the professional as a defense against an attack on our ethical compliance. One of the primary means available is to document your compliance with the ethical standards.

Many standards today require documentation which was not required in the past.

Documentation Requirements

Documentation requirements are found in many professional standards:

1. Auditing Standards
2. Review Standards
3. Compilation Standards
4. Quality Control Standards
5. Peer Review Standards
6. Attestation Standards
7. Other Standards

Audit Documentation

The auditor should prepare audit documentation that enables an experienced auditor, having no previous connection to the audit, to understand:

- The nature, timing, and extent of auditing procedures performed to comply with SASs and applicable legal and regulatory requirements;
- The results of the audit procedures performed and the audit evidence obtained;
- The conclusions reached on significant matters; and
- That the accounting records agree or reconcile with the audited financial statements or other audited information.

In order for us to understand some of the protection that we should use in these situations, we must understand what general body of standards to which we will be held accountable. This includes the AICPA standards as well as Florida requirements.

Documenting is your best means of defense. Be sure to document in writing and in a way that is industry specific and timely.

Documentation implies that each work paper will include the following six points:

1. Who prepared it?

2. When?
3. Who reviewed it?
4. When?
5. Where did it come from?
6. Where is it going?

Clarity Standards

The Auditing Standards Board (ASB) has redrafted almost all of the auditing sections in *Codification of Statements on Auditing Standards* (contained in *AICPA Professional Standards*) now reflecting the ASB's established clarity drafting conventions designed to make the standards easier to read, understand, and apply.

Among other improvements, generally accepted auditing standards (GAAS) now more clearly states the objectives of the auditor and the requirements with which the auditor has to comply when conducting an audit in accordance with GAAS.

As the ASB redrafted the standards for clarity, it also converged the standards with the International Standards on Auditing (ISAs), issued by the International Auditing and Assurance Standards Board (IAASB). Although the purpose of redrafting the auditing standards is for clarity and convergence and not to create additional requirements, auditors will need to make some adjustments to their practices as a result of this project.

The Auditing Standards Board of the AICPA has reached a significant milestone in its ***Clarity Project*** with the release of Statements on **Auditing Standards Nos. 122–124**.

Effective for audits of financial statements for periods ending on or after December 15, 2012, SAS Nos. 122–124 supersede all but seven outstanding SASs through No. 121.

SAS No. 122 contains the Preface to Codification of Statements on Auditing Standards and 39 additional clarified SASs. This statement recodifies and supersedes all outstanding SASs through No. 121 except: SAS 51, SAS 59, SAS 65, SAS 87 and SASs 117-120.

SAS No. 123 contains amendments to clarified SAS Nos. 117–118 and five clarified SASs in SAS No. 122.

SAS No. 124 supersedes the requirements and guidance in SAS No. 51, *Reporting on Financial Statements Prepared for Use in Another Country*, and redrafts that statement to apply the ASB's established clarity drafting conventions.

SAS No. 125 supersedes the requirements and guidance in SAS No. 87, *Restricting the Use of an Auditor's Report*, and redrafts that statement to apply the ASB's established

clarity drafting conventions. This statement also contains amendments to SASs 117 and 119 and six amendments.

SAS No. 126 supersedes the requirements and guidance in SAS No. 59, *The Auditor's Consideration of the Entity's Ability to Continue as a Going Concern*, as amended, and redrafts that statement to apply the ASB's established clarity drafting conventions.

SAS No. 127 contains amendments to SAS No. 122 sections 600 and 800.

Clarity Standards Bring New Auditor's Report

- New report headings
- Expanded communications about management responsibilities
- Expanded communications about auditor responsibilities related to
 - Material misstatements due to error or fraud
 - Internal control

Risk Assessment Standards – Basically Unchanged by Clarity

The former Risk Assessment Standards were virtually unchanged, but they were reworded and recodified into the revised professional standards. The documentation requirements of the former standards are maintained in the clarified standards.

Compilation and Review Documentation

Documentation for compilation and review engagements has changed over time as well as the audit documentation requirements. Several changes in the SSARS standards now require additional documentation.

SSARS 19 requires additional documentation for compilations and review for periods beginning after December 15, 2010. Further, SSARS 19 allows (but does not require) that the reason(s) for the lack of independence in a compilation engagement may be disclosed.

Ethics Guidance from AICPA

A comprehensive article “*New Ethics Guidance for CPAs in Public Practice and Business*” (see A. Reinstein and R. Weirich, *CPA Journal*, March 2012) highlights the new ethics interpretations and rulings from the AICPA's Professional Ethics Executive Committee. Some of the Code amendments went into effect in November 2011, and other changes in April 2012. The following chart is based on data from their article.

Figure 6.1: Summary of Recent Changes to AICPA’s Code of Professional Conduct

New Ethics Section	Old Code	New Code	Effect on CPAs
Comprehensive framework for independence standards [ET Section 100-1.20]	Definitions of public interest and mitigating safeguards were unclear	Public interest entities are defined as subject to SEC, PCAOB, others. ‘Reduce threats’ replaced with ‘mitigate threats’ to an acceptable level.	Clarify these definitions
Clarify Applicability [ET Section 91]	Code did not address international applicability of disciplinary procedures.	Members adhering to IESBA standards face no separate AICPA disciplinary procedures	Clarify which ethics standards members operating in international arena should follow
Clarify Members in business [ET Section 92.22]	Code did not explicitly disclose whether members in public practice or business had to follow certain code sections	Clarify that members must follow code sections based on the types of services provided	Members serving as volunteers may need to follow both public practice and business sections
Disclose client information to third parties [ET Sections 92.05 and 391.2]	No specific guidance on disclosing client information to outsiders (e.g. academic research)	Disclosing client information to outsiders without client permission is more limited	The ability to market client industry trends and obtain research data is impaired
Disclose confidential information learned from former employers [ET Sections 92.05, 391.2, and 501-9]	No DIRs regarding disclosing confidential information learned from former employers	Members are limited in disclosing information learned from former employers	The ability of a CPA to inform a new employer of technological advances or sensitive client information learned from former employer is impaired

New Ethics Section	Old Code	New Code	Effect on CPAs
Expand concept of financial interest threats to members in business and industry [ET Section 100-1.20]	Concept of financial interest threats applied only to members in public practice	Members in business are required to recognize financial interests “threats and safeguards” to their integrity and objectivity	CPAs should recognize potential actions that could harm the member’s employer but could help the member’s family’s financial interests
Expand the ban on false or misleading acts to members in business and industry [Interpretation 501.10, .11]	The concept of prohibiting false, misleading, or deceptive acts applied only to members in public practice	Members in business are required to not use false, misleading, or deceptive acts	Making false claims about education or experience to secure a new professional position is more limited
Reinterpret how to apply independence requirements to entities affiliated with attest clients [Interp.101-18, 20]	The EIRs on how to apply independence requirements to entities affiliated with attest clients were ambiguous	Applying independence requirements applications to entities affiliated with attest clients has been reinterpreted	CPAs should not adhere to the provisions of ET section 101.01 and all its EITs, including their separate businesses, owners and employees
Allow members of CPAs firms to teach part-time for employer educational institution clients [101-.19, .21]	Code did not address the issue of auditors of educational institutions to work as part-time faculty for those clients	Auditors may now work as part-time faculty for these clients	CPAs can teach part-time at their client insitutions, as long as they are not part of the firm’s audit team
Modify application of Rule 101-3 for Attestation Engagements [101-.11, .13]	The code did not address the effect of independence when providing certain information to responsible parties for SSAE engagements	Members can provide nonattest services that would otherwise impair their independence to the responsible parties when such services do not relate to the specific subject matter of the SSAE engagement and	Members can make journal entries for and maintain custody of plan assets in SSAE engagement, provided that it does not affect the independence of the engagement itself

		follow the general requirements of Interpretation 101-3	
Modify the application of the context of GAAP for Rule 203 [Interpretation 203-5]	Rule 203 did not allow members to apply non US GAAP for attest engagements	Members can apply foreign country's comprehensive GAAP standards, but denote the framework used	Members can apply foreign country's financial framework for GAAP financial statements, as long as they use proper disclosures
Clarify when members can withhold records prepared for clients [Interp. 501-1]	Code listed some types of member-prepared client records and did not address the issue of member withholding records related to litigation involving the client	Members must return client prepared records on request but can retain certain member-prepared records for unpaid fees or if pending litigation exists	Members can withhold prepared client depreciation schedules until they receive the related professional fees
Limit members from using misleading firm names [Interpretations 505-4 and 505-5], still pending	Not specifically prohibited by Code	Members should not use confusing or improper firm names	Members cannot call themselves an LLC or PC or PA unless they file proper incorporating documents with the applicable state agency

Adapted from *New Ethics Guidance for CPAs in Public Practice and Business* by Alan Reinstein and Thomas R. Weirich, *CPA Journal*, March 2012, p. 62.

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Florida Board of Accountancy

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New York State Society of CPAs

New Ethics Guidance for CPAs in Public Practice and Business, by A. Reinstein
and R. Weirich, *CPA Journal*, March 2012

<http://viewer.zmags.com/publication/dcefce6a#/dcefce6a/60>

Notes

CHAPTER 7

Tax Ethics

Learning Objectives

The purpose of Chapter 7 is to review the tax practice ethical provisions and their effect on public accounting. The learning objectives for this chapter include:

1. Describe the main responsibilities of a paid tax preparer in regards to ethics.
2. Describe the major ethical considerations discussed in the AICPA's *Statement of Standards for Tax Services*.
3. Describe the main areas of ethical conduct as discussed in IRS Circular 230.

Chapter Content

Ethical Implications on Tax Services and Tax Preparation

This section looks at the *AICPA Statements on Standards for Tax Services* and the IRS requirements for ethics for professionals concerned with the requirements of *Treasury Department Circular 230 (revised 9-2012)*, *Regulations Governing Practice before the Internal Revenue Service* which applies to CPAs, Attorneys, and Enrolled Agents.

The AICPA Code of Professional Conduct has provisions for compliance with Federal, State, and local laws and rules. Failure to do so under the AICPA Code of Conduct comes under the area of "Acts Discreditable...". Specifically, Circular 230 has been revised to require 2 hours of ethics each year.

Ethical Environment in Tax Practice

In an ethical environment, communication and transparency are key. Everyone must realize that ethical behavior is expected, will be rewarded, and is everyone's responsibility.

A tax practice involves more than one type of service. It includes:

- Preparation and filing of tax returns
- Tax and estate planning
- Representing the taxpayer
- Tax education
- Tax court or judicial representation

For CPAs, the conduct guideline issuers include:

- AICPA
- Internal Revenue Service
- Florida Board of Accountancy

Professional Responsibilities

The professional responsibilities of the CPAs include:

- Protecting the client's interest
- Operating in the guidelines of tax laws and ethics rules

Other responsibilities include:

- Continuing education
- Taxpayer education
- Know the client
- Planning
- Research

Paid Preparer's Responsibilities

- Signature – IRC Sec. 6061 and Reg. 1.6695 mandate that a paid tax preparer sign any tax return, document, or other statement presented to the IRS. A failure to do so may involve a \$50 fine per return up to \$25,000 per calendar year. Further, the regulations indicate that this must be an original signature. However, IRS Notice 2004-54, *Alternative Methods of Signing for Income Tax Return Preparers*, allows the signing of original and amended returns and extension requests by “rubber stamp, mechanical device, or computer software program”.
- ID Number- a Social Security number or preparer tax identification number (PTIN) must be in the paid preparer section of the taxpayer's return. The PTIN may be obtained by filing Form W-7P. A fine of \$50 per return up to \$25,000 per year may be assessed if the number is missing.
- Record Retention – The IRS requires a copy of the return or a list including the name and ID number of every client a return was prepared for. These records must be retained for the “*period ending three years after the close of the return period*” per IRC Sec 6107(b). The return period is defined by IRC Sec 6060(c) as “*the 12 month period beginning on July 1 of each year*”. Fines are possible.
- Third Party Designee – Taxpayers may designate a “third-party designee” by checking the box on the return. The taxpayer is not authorizing the designee to receive refunds, bind the taxpayer, or otherwise represent the taxpayer before

the IRS. The authorization may not be revoked but will end automatically no later than the due date without extensions for filing the next tax return.

- Confidentiality – In addition to other “privacy” or confidentiality rules the preparers are required to:
 1. Not use client information for other than the tax return preparation
 2. Keep information confidential. Share with associates only on a “need to know” basis.
 3. Control access to client files
 4. Store in a limited access area
 5. Do not let other clients view or see any files
 6. Computer access should be limited
 7. Confirm identities before releasing information
 8. Get client approval before releasing any information
 9. Do not casually divulge information about who clients are and what they do or have.

- Outsourcing – The AICPA Professional Ethics Executive Committee has issued a ruling regarding outsourcing for services performed on or after July 1, 2005. The basic provisions of this are:
 1. Members of the AICPA must now tell their clients if they will be using a third-party service provider.
 2. Client consent should be obtained prior to disclosing any confidential client information.
 3. Members are still responsible for any outsourcing work.

AICPA “Statements on Standards for Tax Services”

The Statements on Standards for Tax Services (SSTs) set forth the ethical tax practice standards for members of the AICPA. The original SSTs, adopted in 2000, were revised in 2009, effective January 1, 2010. In addition, SSTS Interpretation No. 1-1 and No. 1-2 became effective January 1, 2012.

Statement on Standards for Tax Services No. 1, *Tax Return Positions*

The applicable standards for members when recommending tax return positions, or preparing or signing tax returns (including amended returns, claims for refund, and information returns) filed with any taxing authority

Statement on Standards for Tax Services No. 2, *Answers to Questions on Returns*

The applicable standards for members when signing the preparer’s declaration on a tax return if one or more questions on the return have not been answered.

**Statement on Standards for Tax Services No. 3,
*Certain Procedural Aspects of Preparing Returns***

The applicable standards for members concerning the obligation to examine or verify certain supporting data or to consider information related to another taxpayer when preparing a taxpayer's tax return.

**Statement on Standards for Tax Services No. 4,
*Use of Estimates***

The applicable standards for members when using the taxpayer's estimates in the preparation of a tax return. A member may advise on estimates used in the preparation of a tax return, but the taxpayer has the responsibility to provide the estimated data.

**Statement on Standards for Tax Services No. 5,
*Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decision***

The applicable standards for members in recommending a tax return position that departs from the position determined in an administrative proceeding or in a court decision with respect to the taxpayer's prior return.

**Statement on Standards for Tax Services No. 6,
*Knowledge of Error: Return Preparation and Administrative Proceedings***

The applicable standards for a member who becomes aware of (a) an error in a taxpayer's previously filed tax return; (b) an error in a return that is the subject of an administrative proceeding, such as an examination by a taxing authority or an appeals conference; or (c) a taxpayer's failure to file a required tax return.

**Statement on Standards for Tax Services No. 7
*Form and Content of Advice to Taxpayers***

The applicable standards for members concerning certain aspects of providing advice to a taxpayer and considers the circumstances in which a member has a responsibility to communicate with a taxpayer when subsequent developments affect advice previously provided.

Real Life Examples

Violation	Law/ Rule	Penalty
Florida CPA filed personal income tax late for 5 years.		Reprimand; suspend practice before IRS
Florida CPA failed to timely submit personal income tax for four years; suspended from practicing before the IRS	473.323(1)(j)	Reprimand

Violation	Law/ Rule	Penalty
Florida CPA failed to exercise due diligence in preparing tax returns before the IRS, didn't file own returns for 5 years; engaged in disreputable conduct	10.51(d); 10.22(a); 10.34(b)	Voluntarily relinquish license, barred from practice before the IRS
Florida CPA charged with tax evasion	473.323(1)(d)	Reprimand, \$1K fine
Florida CPA hired to do personal and corporate tax returns; incorrectly advised client of federal income tax liability; advised client to take all compensation as a 'bonus' to avoid paying SS and Medicare	473.323(1)(g)	License suspended
Florida CPA prepared incorrect tax return and never completed corrected copy after direction by client, missing schedules	473.323(1)(g)	License suspended
Florida CPA did not provide evidence that the IRS is a licensing agency; CPA is an EA; cashed US Treasury checks at business for persons other than payees, didn't verify ID; prepared incorrect tax returns for 32 native Americans; received permanent injunction on filing federal returns but didn't tell Florida BOA.	473.323(3)	Case dismissed

IRS/Treasury Initiatives

In 2009 the IRS initiated a study to consider ethical requirements and other issues in paid income tax preparers. They arrived at several conclusions.

First, the final regulations for tax return preparer requirements have been issued. The Preparer Tax Identification Number (PTIN) requirements are part of that issue. The additional regulations seem to have a minimal effect of CPAs because the CPAs are subject to other requirements. However, Section 1.6109-2 requires PTINs for CPAs when signing tax returns, forms, or claims for refund. Notice 2011-6 gives guidance on what forms meet these requirements.

Secondly, and not as widely known, new requirements affect **non-CPAs** who work for CPA firms. They must comply with some and maybe all of the new requirements that include:

- Be 18 or older
- Pay a user fee
- Be supervised by a CPA, EA, or attorney
- Have a CPA (or other authorized person) sign the return
- Pass compliance and/or suitability checks
- Be subject to Circular 230

Ethical Guidelines – Circular 230 and Publication 470

Circular 230, *Regulations Governing the Practice before the Internal Revenue Service*, and Publication 470, *Limited Practice without Enrollment* deal with many issues.

Circular 230 consists of the following five subparts:

- Subpart A – describes the rules governing authority to practice before the IRS, who is eligible to practice before the IRS, who is eligible to practice as an enrolled agent or enrolled actuary, and how one applies for enrollment.
- Subpart B – discusses the duties and restrictions relating to practice before the IRS and other practice matters.
- Subpart C – provides sanctions for violations of Circular 230.
- Subpart D – sets forth detailed rules for the conduct of disciplinary actions and proceedings in connection with violations of Circular 230.
- Subpart E – contains miscellaneous procedural rules.

Circular 230 Specifics

- 10.20 – Information to be furnished – tax preparer is required by law to furnish information or records requested by the IRS. Please note that privilege does not apply even in a criminal matter unless the practitioner is an attorney.
- 10.21 – Knowledge of client’s omission – If tax preparer knows that the client has omitted information, or that there is an error in return, or the client has failed to comply with laws, the preparer is required to immediately notify the client and to explain the consequences of failure to correct or comply with the laws. Other actions are needed if the client fails or refuses to comply or correct.

- 10.22 – Diligence as to accuracy – The tax preparer must exercise due diligence both in preparing, assisting, and making oral or written representations to the Department of Treasury.
- 10.23 – Prompt disposition of pending matters – The CPA shall not unreasonably delay prompt disposition of any matter before the IRS.
- 10.24 – Assistance from disbarred or suspended persons
- 10.27 – Fees – Practitioners may not charge unconscionable fees for representing a client before the IRS. No contingent fees are allowed for an original return or for advice for any position to be taken or taken on an original return. Contingent fees may be charged for claims that the practitioner reasonably expects to receive substantive review by the IRS.
- 10.28 – Return of client’s records – A prompt return of client records is required when requested. Copies may be made and kept.
- 10.29 – Conflicting Interests – Except as provided otherwise, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest as defined in subsection (a). This may involve informed consent given by the client in writing as set out in subpart (b). Also remember that the AICPA Code of Professional Conduct Rule 102-2 sets out examples of numerous conflicts of interest. When in doubt consider contacting your malpractice carrier (if any) and/or your attorney.
- 10.30 – Solicitation. No false or misleading claims or statements. Changed in 2011 to address how a registered tax return preparer, including those newly subject to IRS oversight, may, and may not describe their professional credentials.
- 10.31 – Negotiation of taxpayer refund checks – Not allowed.
- 10.33 – Best practices – Circular 230 sets out four “best practices.”
 - Communicating clearly
 - Establish facts
 - Advising
 - Acting fairly
- 10.34 – Standards for advising with respect to tax return positions and for preparing or signing returns
 1. Realistic possibility standard for sustaining a position
 2. Advising clients on potential penalties when advising on a position

3. Relying on information furnished by clients may be done in good faith; however, reasonable inquiries must be made if information is suspect.

- 10.35 – Requirements for covered opinions
- 10.36 – Procedures to Ensure Compliance, broadens current standards dealing with “covered opinions”.
- 10.51 – Incompetence and disreputable conduct – this section has a long list of activities that should be reviewed by the practitioners. This section includes a failure to file a tax return electronically when required to do so and failure to obtain a PTIN when required.
- 10.52 – Violation of regulations
- 10.53 – Receipt of information - An officer or employee of the IRS is required to make a written report of any violations of the Circular 230.

Real Life Example

Certified Public Accountant Disbarred for Multiple Circular 230 Violations

IR-2013-41, April 12, 2013

WASHINGTON — The Internal Revenue Service announced that its Office of Professional Responsibility (OPR) obtained the disbarment of Certified Public Accountant [Person] for charging unconscionable fees, giving irresponsible advice to clients and making false statements to federal and state authorities, among other things. The CPA is prohibited from preparing tax returns or representing taxpayers before the Internal Revenue Service for a minimum of five years.

In a Final Agency Decision, the Administrative Law Judge (ALJ) disbarred CPA and found that CPA’s advice to clients to use Form 2555 to treat earned income as foreign source income on at least fifty-two tax returns, constituted disreputable conduct under Circular 230, and his failure to research the legitimacy of the filing position specifically violated the Circular’s due diligence standards.

The ALJ also found Circular 230 violations in CPA’s use of a contingent fee structure and in the false statement to IRS Criminal Investigation regarding his fee structure. He was also found to have made false claims to the Board of Accountancy that he ceased advising use of Form 2555 after becoming aware of the first IRS examination of his clients’ returns.

The ALJ also found that CPA violated Circular 230 by engaging in a pattern of delaying IRS examination and collection actions by repeatedly raising

numerous frivolous arguments, long-rejected by the IRS and by case law. CPA's litigation threats against IRS employees, as part of client settlement proposals, were also determined to be violations.

The ALJ found other violations of Circular 230 including: CPA did not respond to OPR requests for information and he submitted a Form 2848, Power of Attorney, naming an unlicensed individual as a second "authorized" representative in a collection matter thereby aiding an ineligible person to practice before the IRS.

FIRAC

What is **FIRAC** in tax research and why is it so important? FIRAC stands for:

Facts

Issue

Rule of law

Analysis/ argument

Conclusion

If the practitioner FIRACs, they have done their job and meet the aspirational standards as well as the standards under Circular 230, Sections 10.34, 10.35, 10.36, 10.37, and IRC 6694.

In conclusion, if the preparer has substantial authority there will be no penalties. Substantial authority means you did your duty with FIRAC and did sufficient research.

Remember. The preparer's work is never passive. Never.

Discussion Points

Tax Practice Situations

Situations for Error(s) in Prior Returns:

Situation 1

- You did not prepare prior return.
- You review prior return for any info needed.
- In the review you discover an error.
- *What should you do?*

Situation 2

- You prepared prior returns for your client.
- In current year, you discover error you made for past three years.

- Error will result in taxes, penalties, and interest.
- Your firm has a policy for interest and penalties.
- *What should you do?*

Situation 3

- Because of nature of error in prior returns, you may face preparer penalties.
- However, if not amended the error may not be discovered.
- *What should you do?*

Potential New Client

- New client interviews you as potential tax preparer.
- Client states no returns for five years, books contain only receipts by checks, invoices paid covered by checks in receipt, pocketed all cash, and has no records of cash transactions.
- *Your call?*

Client wants to use refund check issued in error

- Client informs you of second refund check with interest received.
- After review, you determine that check was in error and suggest calling the IRS.
- Client refuses and explains the planned use for the money.
- *What should you do?*

Offer in Compromise (OIC)

- Client hires you to help with OIC.
- After many hours of research and gathering documents, you submit OIC of \$1,500 for tax debt of \$75,000.
- Client later tells you OIC was accepted and that she was glad the IRS did not find out about her lottery winnings of \$400,000 prior to filing.
- She had assistance from her brother in obtaining the money. No traceable actions.
- *Your call?*

Clients in Divorce Situation

- Mr. and Mrs. Sunshine have been clients for several years.
- Mr. Sunshine has return prepared and tells of separation and pending divorce.
- Mrs. Sunshine comes in four weeks later to have her return prepared.
- She asks if Mr. Sunshine has been in.
- *What should you do?*

References

AICPA

Treasury Department Circular No. 230

<http://www.aicpa.org/InterestAreas/Tax/Resources/StandardsEthics/TreasuryDepartmentCircularNo.230/Pages/default.aspx>

Statements on Standards for Tax Services Overview

<http://www.aicpa.org/Research/Standards/Tax/Pages/default.aspx>

Internal Revenue Service

Circular 230 Tax Professionals

<http://www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals>

<http://www.irs.gov/pub/irs-pdf/pcir230.pdf>

FIRAC

FIRAC: An ELEMENTary Approach to Legal Reasoning; David Guenther,
Professor Emeritus, Central Michigan University

<http://www.100megsfree3.com/wordsmith/firacintro.html>

Notes

CHAPTER 8

Ethics and Independence

Learning Objectives

The purpose of Chapter 8 is to review the standards for independence. The learning objectives for this chapter include:

1. Compare the similarities and differences between Florida and national rules for Independence.
2. Compare independence standards between the Florida Board of Accountancy, American Institute of CPAs, Securities and Exchange Commission, and Government Accountability Office.
3. Define the key terms per AICPA's Professional Standards ET 92.04.
4. Identify the types of individuals who may impair the independence of an engagement team
5. Distinguish when independence is or is not impaired when providing non-attest services to attest clients per AICPA Interpretation 101-3

Chapter Content

Which Rules are for You?

Independence in public accounting is the pinnacle of professional ethics. One of the difficult aspects of independence is determining which rules apply to you. The following figure may assist in that decision process.

Standards for Independence

One of the key dilemmas of our profession is independence. The standards for independence come from a variety of sources:

- The Florida Legislature
- The Florida Board of Accountancy
- The American Institute of Certified Public Accountants
- The Public Company Accounting Oversight Board
- The Security and Exchange Commission
- Yellow Book and/or OMB Requirements

Figure 8.1: Independence Rules

	FLORIDA	AICPA	SEC	GAO
WHO	Florida CPAs	AICPA Members	Auditors of Issuers	Governmental auditors
What	<ul style="list-style-type: none"> • Florida Statutes • Florida Administrative Code • Standards for Independence 	<ul style="list-style-type: none"> • Rule of Conduct 101 • Interpretation of Rule 101 • Ethics Rulings 	<ul style="list-style-type: none"> • Regulation S-X • Rule 2-01 • Accounting Series Releases • Independence Standards • Board standards and interpretations • Financial Reporting Releases 	<ul style="list-style-type: none"> • GAGAS
WHERE	<ul style="list-style-type: none"> • Florida Statutes • Florida Administrative Code • Florida BOA Web site & related links* 	<ul style="list-style-type: none"> • Code of Professional Conduct • ET §101 • ET §191 • ET §92 • AICPA Web site & related links* 	<ul style="list-style-type: none"> • Regulation S-X, Rule 2-01 • Codification of Financial Reporting Policies §601 and §602 • ISB Web site & related links* 	<ul style="list-style-type: none"> • Government Auditing Standards at Web site*
WHEN	<ul style="list-style-type: none"> • All attest functions 	<ul style="list-style-type: none"> • All attest functions 	<ul style="list-style-type: none"> • All attest functions for public companies 	<ul style="list-style-type: none"> • All attest functions for governmental entities

* www.myflorida.com/dbpr/cpa

* www.aicpa.org

* www.sec.gov

* www.gao.gov

Key Terms

There are several aspects to independence apart from their source of origin such as:

1. The covered member
2. The services performed
3. The client
4. The relationship

Who is a Covered Member?

You, the CPA, and your firm will be considered a covered member if you participate in or are able to influence a client's attest engagement. Further, if you or your firm controls any entities, then that entity is considered a covered member as well.

Stated another way in ET §92.04, a covered member will be all that follow:

1. An individual on the attest engagement team.
2. An individual in a position to influence the attest engagement.
3. A partner or manager who provides nonattest services to the attest client beginning once he or she provides ten hours of nonattest services to the client within any fiscal year and ending on the later of the date (a) the firm signs the report on the financial statements for the fiscal year during which those services were provided or (b) he or she no longer expects to provide ten or more hours of nonattest services to the attest client on a recurring basis.
4. A partner in the office in which the lead attest engagement partner primarily practices, in connection with the attest engagement.
5. The firm, including the firm's employee benefit plan.
6. An entity who's operating, financial, or accounting policies can be controlled by any of the individuals or entities described in 1 through 5 or by two or more such individuals or entities if they act together.

Services Performed - An Attest Engagement?

In ET 92.01, an attest engagement is an engagement that requires independence as defined in AICPA Professional Standards.

These rules for independence all echo the other; some rules being more restrictive than others. For Florida CPAs the Florida Statutes and FAC generally set the stage. Chapter 473.15, F.S. indicates the following:

473.315 Independence, Technical Standards

(1) A certified public accountant shall not express an opinion on the financial statements of an enterprise unless she or he and her or his firm are independent with respect to such enterprise.

(2) A certified public accountant shall not undertake any engagement in the practice of public accounting which she or he or her or his firm cannot reasonably expect to complete with professional competence.

(3) The board shall adopt rules establishing the standards of practice of public accounting, including, but not limited to, independence, competence, and technical standards.

(4) Attorneys who are admitted to practice law by the Supreme Court of Florida are exempt from the standards of practice of public accounting as defined

in s. [473.302](#)(8)(b) and (c) when such standards conflict with the rules of The Florida Bar or orders of the Florida Supreme Court.

History.--ss. 14, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 4, ch. 91-429; s. 349, ch. 97-103; s. 9, ch. 98-340; s. 107, ch. 2010-5.

The Florida Administrative Code (FAC), Section 61H1-21.001 specifies:

61H1-21.001 Independence

(1) A firm shall not express an opinion on financial statements (as that term is defined in the Standards for Independence) of an enterprise or on the reliability of an assertion by one party for use by another (third) party unless the firm is independent with respect to such enterprise or the party making the assertion. A licensed firm is also precluded from expressing such an opinion if the firm is aware that an individual in the firm is not independent and that individual is a covered certified public accountant or is otherwise required to be independent. A certified public accountant shall not express such an opinion unless the individual is independent with respect to such enterprise or the party making the assertion. A certified public accountant is also precluded from expressing such an opinion if he or she is aware that an individual in the firm is not independent and that individual is a covered licensee or is otherwise required to be independent. All covered licensees and all other individuals who are required to be independent are required to disclose to the firm that they are not independent prior to the issuance of such an opinion; failure to do so is a violation of this rule.

All firms are required to adopt appropriate policies to implement the disclosure requirement and to monitor compliance therewith.

(2) In order to delineate the standards against which a certified public accountant's independence or lack thereof is to be judged, the Board has created a document entitled "Standards for Determining Independence in the Practice of Public Accountancy for CPAs Practicing Public Accountancy in the State of Florida" (effective 12-31-2004) (hereinafter "Standards for Independence") which document is hereby incorporated by reference in this Rule. The standards contained in the "Standards for Independence" are similar to those contained in the Code of Professional Conduct promulgated by the American Institute of Certified Public Accountants.

(3) In order to be considered independent a certified public accountant must comply with the requirements set out in the "Standards for Independence" and the requirements of this rule.

*Specific Authority 473.304, 473.315 FS.
Law Implemented 473.315 FS.*

History–New 12-4-79, Amended 2-3-81, 10-28-85, Formerly 21A-21.01, Amended 10-

20-86, Formerly 21A-21.001, Amended 5-21-03, 1-31-05, 12-10-09.

Code of Professional Conduct

In the “*Standards for Independence*” set out by the Florida BOA, there is a direct reference to the *Code of Professional Conduct* of the AICPA.

“The Code of Professional Conduct was adopted by the membership to provide guidance and rules to all members - those in public practice, in industry, in government, and in education - in the performance of their professional responsibilities.” (Intro. to Code of Professional conduct of the AICPA)

From the pronouncements, one can assume that if you are either a member of the American Institute of CPAs or a licensed Florida CPA, the provisions for independence will apply.

The major question is – apply to which engagements?

Engagements

It would appear from a reading of the AICPA’s *Ethics Interpretation No. 101-3, Performance of Nonattest Services*, that an attest engagement is any engagement which requires the CPA to be independent. Five basic engagements would meet that requirement:

1. Audit
2. Review
3. Compilation
4. Attestation
5. Prospective Financial Statements

Under this standard, the Interpretation would not apply to a compilation engagement which the accountant has modified the report to indicate a lack of independence.

In considering this question, we run into several issues. First, there is no question that a review engagement or an audit engagement is an “attest” engagement.

In SSARS 19 there is a clear indication that a compilation is an attest engagement.

AR 60

.05 A compilation is a service, the objective of which is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for the

statements to be in conformity with the applicable financial reporting framework. Although a compilation is not an assurance engagement, it is an attest engagement.
 (Emphasis added by Patterson)

Because the Florida rules indicate that the “Standards of Independence” are similar to those in the AICPA’s Code of Professional Conduct, we should consider the compilation engagement as being one that requires independence. We also recognize that a compilation may be performed when the CPA is not independent if the report is modified to indicate the lack of independence. Further evidence of this status for compilations is the position of the peer review program where the program will consider a compilation engagement as an “attest” engagement.

Who is the Client?

A major issue is “who is the client”? In Chapter 61H1-20.003, a client is defined as:

61H1-20.003 Client

“Client” shall be deemed and construed to mean the person(s) or entity which retains a certified public accountant or firm for the

performance of public accounting services.
History—New 12-4-79, Formerly 21A-20.03, 21A-20.003; Amended 9-21-10.

Real Life Example

Violation	Law/ Rule	Penalty
Florida CPA induced clients to purchase \$5 million in promissory notes issued by a company; promissory notes were personally guaranteed by company's owner and wife. Company defaulted on notes and failed to fulfill obligations. Financial statement of company omitted material amounts of debt that the guarantors owed to other clients of respondents investment advisory firm. Financial statement falsely stated that there were no personal guarantees of any prior loans. Respondent failed to disclose material conflict of interest. SEC brought action.	473.323(1)(k)	Reprimand

Independence and Gifts and Entertainment

The AICPA Professional Ethics Executive Committee has approved the release of the following ethics ruling. Ethics Ruling No. 1 under Rule 101 has been deleted because the substance has been incorporated into Ethics Ruling No. 114.

Rule 101, Ethics Ruling No. 114 Acceptance or Offering of Gifts or Entertainment to or from an Attest Client

.228 Question—Would independence be considered to be impaired if a member or the member’s firm offers or accepts gifts or entertainment to or from an attest client, an individual in a key position with an attest client, or an individual owning 10 percent or more of the attest client’s outstanding equity securities or other ownership interests (collectively, an attest client)?

.229 Answer—Independence would be considered to be impaired if the member’s firm or a member on the attest engagement team or in a position to

influence the attest engagement accepts a gift from an attest client, unless the value is clearly insignificant to the recipient. Independence would not be considered to be impaired if a covered member accepts entertainment from an attest client, provided the entertainment is reasonable in the circumstances.

Independence would not be considered to be impaired if a covered member offers gifts or entertainment to an attest client, provided the gift or entertainment is reasonable in the circumstances.

AICPA Interpretation 101-3

Revisions to Interpretation 101-3 have been issued by the Professional Ethics Executive Committee (PEEC). These revisions concern the area of bookkeeping, internal audit services, valuation, appraisal, actuarial services, and information systems design and implementation. Further, the revisions tighten the requirements for documentation of the member’s understanding with the client regarding the services to be performed.

Test Your Knowledge of Professional Ethics

Here are further examples of questions and answers from the AICPA:
Find out how well you know your profession's standards of conduct” by Shannon Ziemba, CPA; Journal of Accountancy, October 2012

JOA Editor’s Note

The AICPA Code of Professional Conduct (AICPA Professional Standards) is an ever-evolving document. Periodically, the *JofA* publishes answers from AICPA Professional Ethics Division staff to questions asked by AICPA members via the Institute’s Ethics Hotline or on topics related to revisions to the code. This set of questions and answers deals with application of the code both to members in business and to members in public practice.

1. A CPA prepares an individual tax return for a client. Upon completion of the tax return, the client has not paid the fees in full for the preparation of that tax return, yet has requested to receive the tax return from the CPA. *May the CPA withhold the tax return until such payment has been received?*
2. A CPA firm audits a 401(k) plan for a company but performs no attest services for that company. The company has asked the CPA firm to perform an appraisal of the company's fixed assets based on the belief that some of the assets are impaired or overvalued on the property, plant, and equipment listing. The fixed assets are material to the company's financial statements. *Can the CPA firm perform the valuation service and still remain independent to audit the 401(k) plan?*
3. A CPA firm in Springfield, Ill., has a client with inventory housed in warehouses in El Paso, Texas, and Juarez, Mexico. The firm is a member of an accounting firm association and is considering using CPAs from an El Paso firm that also is a member of the association to do the observation of the physical inventory. *Would the use of CPAs from another member firm be considered sharing significant professional resources under Interpretation 101-17, Networks and Network Firms, of the code, resulting in the firms in Springfield and El Paso being considered network firms?*
4. A CPA firm has been asked by a benchmarking organization to provide certain financial information, not available to the public, on the firm's medical products manufacturing clients. The benchmarking organization intends to use this information to analyze and aggregate data on this industry group for its quarterly newsletter. The organization has assured the CPA firm that no one would be able to identify the CPA firm's individual clients, as the information would be aggregated and presented as industry statistical averages. *Can the CPA firm provide this information to the benchmarking organization without violating client confidentiality if the firm has not received specific client consent?*
5. A CPA works for a privately held manufacturing company as a senior financial analyst. The company does not release any financial information to the public and considers such information confidential. The CPA resigns from the company and is subsequently hired by that company's main competitor. *Can the CPA disclose to the new employer what his former employer's profit margins were on products?*
6. A privately owned company has engaged a CPA firm to perform agreed-upon procedures (AUP) related to royalty and licensing fees under Statements on Standards for Attestation Engagements (SSAE) No. 10 (as amended by SSAE No. 11), *Agreed-Upon Procedures Engagements*. The company believes it is not receiving all the royalties and licensing fees it is due. The company has asked to pay the CPA firm based on a percentage of royalties and licensing fees collected. The CPA firm currently provides only tax services to this company. *May the CPA firm perform this AUP engagement on such a contingent-fee basis?*

7. A CPA firm has acquired a new client. The client's financial records were prepared by the predecessor CPA firm in QuickBooks. *Is the predecessor CPA firm required to provide, upon the client's request, the client's records in a QuickBooks data file to the client?*

8. The spouse of a partner in a CPA firm has a 10% ownership interest in ABC Co., an investment group controlled by XYZ Co. XYZ also controls GHI Co., which is an attest client of the CPA firm. GHI is material to XYZ; however, ABC is not. *Is the firm's independence impaired?*

9. A manager of a CPA firm provides more than 10 hours of consulting services to an attest client of the firm. The manager's spouse is employed by the client in its engineering department (a non-key position). The client requires that all matching of 401(k) contributions be made with the company's stock. *Can the manager's spouse participate in his company's 401(k) plan without impairing the CPA firm's independence?*

10. A manager of a CPA firm refinanced his mortgage through ABC Bank, which is not a client of the CPA firm. The CPA's mortgage was subsequently sold to XYZ Bank, which is an attest client of the CPA firm, and the manager works on the attest engagement for XYZ Bank. *Is the firm's independence with respect to XYZ Bank now impaired?*

ANSWERS

1. **Yes.** Interpretation 501-1, *Response to Requests by Clients and Former Clients for Records*, states that a member may withhold his or her work product, such as a tax return, if the client has not paid the fees for preparing the specific work product. The member may withhold only work products for which fees are owed. However, it should be noted that the member must also comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory body. For example, certain state boards of accountancy do not permit a member to withhold certain records notwithstanding fees due to the member for the work performed. If the member's state board's rules are more restrictive than the code, the member must comply with the state board's rules.

2. **Yes.** Interpretation 101-18, *Application of the Independence Rule to Affiliates*—which is effective for engagements covering periods beginning on or after Jan. 1, 2014, with early implementation allowed—says that prohibited nonattest services can be provided to a sponsor of a single employer benefit plan financial statement attest client as long as the results of such nonattest services will not be subject to financial statement audit procedures during the 401(k) audit. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level (in particular,

those relating to management participation), such threats should be eliminated or reduced to an acceptable level by the application of safeguards.

3. **No.** Under Interpretation 101-17, *Networks and Network Firms*, the firms would not be considered network firms based solely on the fact that the firm uses staff from another member firm of the association to observe a client's physical inventory. The occasional use of staff from another member firm to observe physical inventory does not constitute the sharing of significant professional resources.

4. **No.** Under Ethics Ruling No. 2, *Disclosure of Client Information to Third Parties*, under Rule 301, *Confidential Client Information*, the CPA firm could not disclose any information to the benchmarking organization without specific client consent, preferably in writing.

5. **No.** Interpretation 501-9, *Confidential Information Obtained From Employment or Volunteer Activities*, states that a CPA cannot disclose confidential employer information without the proper authority or specific consent of the employer. Confidential employer information includes any proprietary information pertaining to the employer that is not known to be available to the public and is obtained as a result of the CPA's current or previous employment relationship.

6. **Yes.** Under Rule 302, *Contingent Fees*, it would not be prohibited for the CPA firm to be paid on a contingent-fee basis to perform an AUP engagement. However, it should be noted that the member must also comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory body. If the member's state board's rules are more restrictive than the code, the member must comply with the rules of his or her state board.

7. **Yes.** Interpretation 501-1, *Response to Requests by Clients and Former Clients for Records*, states that if the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. However, the member is not required to provide the client with underlying formulas unless the formulas support the client's underlying accounting or other records, or the member was engaged to provide such formulas as part of a completed work product.

8. **No.** Under Interpretation 101-18, *Application of the Independence Rules to Affiliates*, which is effective for engagements covering periods beginning on or after Jan. 1, 2014, with early implementation allowed, a sister entity of a financial statement attest client would be considered an affiliate of the financial statement attest client and subject to the independence rules only if both the sister entity and the financial statement attest client are material to the entity that controls both.

9. **Yes.** Under Interpretation 101-1, *Interpretation of Rule 101*, “Application of the Independence Rules to a Covered Member’s Immediate Family,” the spouse may participate without impairing the firm’s independence as long as (1) the plan is offered to all employees in a comparable position; (2) the spouse does not serve in a position of governance for the plan; and (3) the spouse does not have the ability to supervise or participate in the plan’s investment decisions or in the selection of the investment option made available to the plan participants. If at any time the spouse has the option to invest the matching contribution in something other than the employer’s stock, then the spouse must choose such option and the company stock must be disposed of as soon as practicable but no later than 30 days after such option becomes available.

10. **No.** Under Interpretation 101-5, *Loans From Financial Institution Clients and Related Terminology*, independence would not be impaired if the home mortgage was obtained from a nonclient financial institution and later sold to a financial institution attest client. The manager must, however, make sure that the loan remains current at all times and that the terms of the mortgage agreement do not change.

SCORING

If you answered all 10 questions correctly, congratulations. Your solid and current knowledge about the Code of Professional Conduct will assist you in serving your clients or your employer within the framework of the code. If you answered seven to nine questions correctly, you’re on the right track. If you answered fewer than seven questions correctly, you need to make sure you are keeping track of the latest revisions to the code.

Independence Changes in Compilation and Review Engagements

SSARS 19 - Reporting When the Accountant Is Not Independent

.21 - When the accountant is issuing a report with respect to a compilation of financial statements for an entity, with respect to which the accountant is not independent, the accountant’s report should be modified. In making a judgment about whether he or she is independent, the accountant should be guided by the AICPA’s Code of Professional Conduct. The accountant should indicate his or her lack of independence in a final paragraph of the accountant’s compilation report. An example of such a disclosure would be -- *I am (We are) not independent with respect to XYZ Company.*

The accountant is not precluded from disclosing a description about the reason(s) that his or her independence is impaired. The following are examples of descriptions the accountant may use: (emphasis Patterson)

- a. I am (We are) not independent with respect to XYZ Company as of and for the year ended December 31, 20XX, because I (a member of the engagement team) had a direct financial interest in XYZ Company;

- b. I am (We are) not independent with respect to XYZ Company as of and for the year ended December 31, 20XX, because an individual of my immediate family (an immediate family member of one of the members of the engagement team) was employed by XYZ Company; or
- c. I am (We are) not independent with respect to XYZ Company as of and for the year ended December 31, 20XX, because I (we) performed certain accounting services (the accountant may include a specific description of those services) that impaired my (our) independence.

If the accountant elects to disclose a description about the reasons his or her independence is impaired, the accountant should ensure that all reasons are included in the description.

SSARS 19, Compilation and Review Engagements allows but does not require the disclosure of the reason(s) for independence in a compilation engagement. The standard still requires that review engagements be performed by an independent CPA.

SSARS 20

SSARS No. 20. Revised Applicability of Statements on Standards for Accounting and Review Services This section amends paragraph .01 of AR section 90 so that SSARSs do not apply when the provisions of SAS No. 100, *Interim Financial Information*, as amended by SAS No. 116, *Interim Financial Information*, and SAS No. 121, *Revised Applicability of Statement on Auditing Standards No. 100, Interim Financial Information*, apply.

Independence Changes in Attestation Engagements

SSAE No. 17 - Reporting on Compiled Prospective Financial Statements When the Practitioner's Independence Is Impaired

The Accounting and Review Services Committee has issued SSAE No. 17, *Reporting on Compiled Prospective Financial Statements When the Practitioner's Independence Is Impaired*, to amend paragraph 23 of Statement on Standards for Attestation Engagements No. 10 section 301, *Financial Forecasts and Projections* (AICPA, *Professional Standards*, vol. 1, AT sec. 301), to permit, but not require, the accountant to disclose the reason(s) for an independence impairment in a report on compiled prospective financial information. SSAE No. 17 is effective for compilations of prospective financial statements for periods ending on or after Dec. 15, 2010.

References

AICPA

Code of Professional Conduct

<http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/default.aspx>

Ethics IQ Quiz on Professional Conduct

<http://www.journalofaccountancy.com/Issues/2012/Oct/20125461.htm>

FICPA

Appendix A: Florida Independence Standards

Notes

CHAPTER 9

Privileged Confidentiality, Communication, and Other Considerations (61H1-23, FAC)

Learning Objectives

The purpose of Chapter 9 is to examine the responsibilities of the CPA to his or her client. The learning objectives for this chapter include:

1. Describe “privileged communication” between a CPA and client under Florida statutes and rules.
2. Describe the disposition of client records per national and Florida rules.
3. Define the term “client record” per AICPA Ethics rule 501-1.
4. Describe the implications to the CPA of verifying a ‘comfort letter’.
5. Describe what is permissible in regards to advertising and solicitations of clients per national and Florida rules.
6. Describe the various forms of practice available to a licensee per 61H1-26.001.
7. Explain how a practice can be named and share office space per 61H1-26.001.

Chapter Content

This chapter focuses on the practice responsibilities of CPAs. We will examine:

- Client communications
- Record retention
- Advertising

In the Florida Statutes, Chapter 473.316, Communications between the accountant and client privileged, indicates the statutory grounds for communications.

473.316 Communications between the accountant and client privileged. —

(1) For purposes of this section:

(a) An “accountant” is a certified public accountant.

(b) A “client” is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant with the purpose of obtaining accounting services.

(c) A communication between an accountant and her or his client is “confidential” if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.
2. Those reasonably necessary for the transmission of the communication.

(d) A “quality review” is a study, appraisal, or review of one or more aspects of the professional work of an accountant in the practice of public accountancy which is conducted by a professional organization for the purpose of evaluating quality assurance required by professional standards, including a quality assurance or peer review.

(e) A “review committee” is any person or persons who are not owners or employees of an accountant or firm that is the subject of a quality review and who carry out, administer, or oversee a quality review.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

(3) The privilege may be claimed by:

- (a) The client.
- (b) A guardian or conservator of the client.
- (c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The accountant, but only on behalf of the client. The accountant’s authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no accountant-client privilege under this section when:

(a) The services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud.

(b) A communication is relevant to an issue of breach of duty by the accountant to her or his client or by the client to her or his accountant.

(c) A communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of them to an accountant retained or consulted in common when offered in a civil action between the clients.

(5) Communications are not privileged from disclosure in any disciplinary investigation or proceeding conducted pursuant to this act by the department or before the board or in any judicial review of such a proceeding. In any such proceeding, a certified public accountant or public accountant, without the consent of her or his client, may testify with respect to any communication between the accountant and the accountant’s client or be compelled, pursuant to a subpoena of the department or the board, to testify or produce records, books, or papers. Such a communication disclosed to the board and records of the board relating

to the communication shall for all other purposes and proceedings be a privileged communication in all of the courts of this state.

(6) The proceedings, records, and work papers of a review committee are privileged and are not subject to discovery, subpoena, or other means of legal process or to introduction into evidence in a civil action or arbitration, administrative proceeding, or state accountancy board proceeding. A member of a review committee or person who was involved in a quality review may not testify in a civil action or arbitration, administrative proceeding, or state accountancy board proceeding as to

any matter produced or disclosed during the quality review or as to any findings, recommendations, evaluations, opinions, or other actions of the review committee or any members thereof. Public records and materials prepared for a particular engagement are not privileged merely because they were presented during the quality review. This privilege does not apply to disputes between a review committee and a person subject to a quality review.

History. — ss. 15, 25, ch. 79-202; ss. 2, 3, ch. 81-318; ss. 10, 11, ch. 85-9; s. 1, ch. 91-63; s. 26, ch. 91-140; s. 4, ch. 91-429; s. 350, ch. 97-103; s. 15, ch. 2009-54.

The FAC and Responsibilities

There are two responsibilities to clients set out in F.A.C. 61H1-23:

1. Confidential client information
2. Records disposition responsibility

Confidential Client Information

The CPA should not disclose any confidential information without the client's consent. This rule is not intended to relieve any obligations under the auditing or accounting principles. Peer reviews are also not prohibited under the rule.

Confidential client information encompasses other aspects of confidentiality. For instance, how records are stored in an office is important. Open files on desks that may be viewed are inappropriate for the office. Files that are easily accessible to other customers are also not appropriate.

Client information must also be kept confidential when stored off-site. Access to off-site storage should be limited and the off-site location should be secure. "Off-site" means digitally as well as physically. Passwords, encryptions, and other security measures should be in place to further secure the data.

61H1-23.001 Confidential Client Information

A certified public accountant shall not disclose any confidential information

obtained in the course of a professional engagement except with the consent of

the client. This rule shall not be construed to relieve a certified public accountant of his obligation under Rules 61H1-22.002 and 22.003 or to contravene or contradict any of the provisions of 473, F.S. Furthermore, this rule shall not prohibit a confidential

review of a certified public accountant's professional practice as a part of a quality review program.

History—New 12-4-79, Formerly 21A-23.01, 21A-23.001.

Real Life Example

Violation	Law/ Rule	Penalty
IRS notified client of \$600 owed in back taxes from error; Florida CPA failed to submit client check or communicate with client, interest and penalties continued	473.323(1)(g)	

Records Disposition Responsibility

The licensee may not retain client documents after the document has been requested by the client. These documents include:

- Accounting records of the client
- Other records of the client
- Any records received from the client

Reasonable charges for costs incurred may be made by the licensee.

Simply put, give the record back to the client when asked. If client records are returned more than three months after the date requested and there is no evidence that the failure was due to any fees not being paid, you could get fined \$500 per Rule 61H1-36.005(3)(e), F.A.C.

61H1-23.002 Records Disposition Responsibility

(1) A certified public accountant shall furnish to a client or former client within a reasonable time after request of the document the following if they are in the certified public accountant's possession or control at the time of the request. Any accounting or other records belonging to the client which the certified public accountant may have had occasion to remove from client's premises, or to

receive for the client's account, including records prepared as part of the service to the client which would be needed to reconcile to the financial statements or tax return prepared and issued by the certified public accountant. If the tax return or financial statement has not been issued, the certified public accountant must only return records received from the client, but this shall not preclude the

licensee from making copies of such documents when same form the basis of work done by the certified public accountant.

(2) This rule shall not preclude a licensee from making reasonable charges for costs incurred. A certified public accountant shall not withhold those items contemplated above under any

circumstances following a demand for same from the client.

(3) Provisions of this rule apply to Licensed Audit Firms and to all certified public accountants practicing public accounting.

History—New 12-4-79, Amended 12-11-83, Formerly 21A-23.02, Amended 9-1-87, Formerly 21A-23.002, Amended 10-28-98, 10-26-09.

Interpretations under Rule 501

—Acts Discreditable

.02 501-1—Response to requests by clients and former clients for records.

Terminology

The following terms are defined below solely for use with this interpretation:

- *Client provided records* are accounting or other records belonging to the client that were provided to the member by or on behalf of the client.
- *Client records prepared by the member* are accounting or other records (for example, tax returns, general ledgers, subsidiary journals, and supporting schedules such as detailed employee payroll records and depreciation schedules) that the member was engaged to prepare for the client.
- *Supporting records* are information not reflected in the client's books and records that are otherwise not available to the client with the result that the client's financial information is incomplete. For example, supporting records include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) that are produced by the member during an engagement (for example, an audit).
- *Member's working papers* include, but are not limited to, audit programs, analytical review schedules, and statistical sampling results, analyses, and schedules prepared by the client at the request of the member.

Interpretation

When a client or former client (client) makes a request for client-provided records, client records prepared by the member, or supporting records that are in the custody or

control of the member or the member's firm (member) that have not previously been provided to the client, the member should respond to the client's request as follows:¹

- *Client provided records* in the member's custody or control should be returned to the client.
- *Client records prepared by the member* should be provided to the client, except that client records prepared by the member may be withheld if the preparation of such records is not complete or there are fees due the member for the engagement to prepare those records.
- *Supporting records* relating to a completed and issued work product should be provided to the client, except that such supporting records may be withheld if there are fees due to the member for the specific work product.

Once the member has complied with these requirements, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.

Member's working papers are the member's property and need not be provided to the client under provisions of this interpretation; however, such requirements may be imposed by state and federal statutes and regulations, and contractual agreements.

In connection with any request for client-provided records, client records prepared by the member, or supporting records, the member may:

- Charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client;
- Provide the requested records in any format usable by the client²; and
- Make and retain copies of any records returned or provided to the client.

Where a member is required to return or provide records to the client, the member should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made. The fact that the statutes of the state in which the member practices grants the member a lien on certain records

¹ The member is under no obligation to retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.

² The member is not required to convert records that are not in electronic format to electronic format. However if the client requests records in a specific format and the member was engaged to prepare the records in that format, the client's request should be honored.

in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. In addition, certain states have laws and regulations that impose obligations on the member greater than the provisions of this interpretation and should be complied with.

[Revised, effective April 30, 2006, by the Professional Ethics Executive Committee.]

Real Life Examples

Violation	Law/ Rule	Penalty
Florida CPA failed to file tax return, failed to return tax-related documents after numerous requests, failed to communicate with client.	473.323(1)(g)	License revoked
Florida CPA failed to file tax extension upon request of client or communicate with IRS; would not return client records	473.323(1)(g); 473.323(1)(j); 473.323(1)(m)	License suspended
Accepted payment for, but did not file personal and business taxes for client; did not return records	473.323 (1)(h); 61H1-23.002 record retention	License suspended
Florida CPA failed to file client's taxes for 3 years and assist with IRS tax issues; would not provide copies of documents to client's rep	473.323(1)(g); 61H1-23.002(1)	Voluntarily relinquish license

Discussion Points

9.1 Record Retention

- *What is considered a client record?*
- *Can I keep client records if the client has not paid me?*
- *The AICPA Code of Conduct states that I can, so which rule do I follow?*
- *How long am I required to keep records of clients or non-clients?*

Verification Documents or Comfort Letters

CPAs may receive requests from banks, financial institutions, and mortgage companies to verify financial information for a client. According to Florida Professor Steven

Platau, these letter-writing requests come in many forms. The most basic is to confirm the client relationship, or that the CPA has prepared individual income-tax returns for the client. Somewhat more complicated is representing that money to be withdrawn from the business will not negatively impact enterprise equity, or that the entity likely will continue to make distributions of \$X for the foreseeable future.

Really challenging is opining that the client is current on all its tax-filing obligations, or verifying that the client properly classifies individuals as employees; that equity is at least \$X; or that all client employees are legal immigrants. Equally challenging is a reference letter to a financial institution in another country, despite the fact that it is customary in that country to obtain business references as part of commencing a banking relationship.

The risk in responding to these requests is significant.

Sample Response Letter to Lender or Broker

AON provides online resources for these letters (see reference list). Below is an example of suggested language for the body of a letter.

I am writing to you at the request of Mr. & Mrs. _____.

The purpose of this letter is to confirm that I prepared the 20XX federal individual income tax return of Mr. & Mrs. _____ and delivered this return to them for review and approval before filing it electronically with the Internal Revenue Service (IRS) and [state tax authority].

Mr. & Mrs. _____ provided the firm with a signed and dated copy of IRS Form 8879, which includes a declaration that they examined a copy of their electronic individual income tax return and accompanying schedules and statements for that tax year and declared that it is true, correct and complete to the best of their knowledge.

This return was prepared from information furnished to me by Mr. & Mrs. _____. This information was neither audited nor verified by me, and I make no representation nor provide any assurance regarding the accuracy and completeness of this information, or the sufficiency of this tax return, as it relates to your decision to extend credit to, or make any other determination regarding, Mr. and Mrs. _____ or any other persons or entities.

I prepared Mr. & Mrs. _____ tax return in accordance with applicable tax law and regulations, and guidance by IRS and [state tax authority], solely for filing with the tax authorities. As a result, the tax return does not represent any assessment on my part as to their creditworthiness, and does not include any statement of their financial position or income and expense for the

year 20XX in accordance with generally accepted accounting principles, and should not be construed to do so.

As you know, a credit decision, or any other determination for which this information might be used, should be based upon the exercise of due diligence in obtaining and considering multiple factors and information. Any use by you of Mr. & Mrs. _____ 20XX federal individual income tax return and this letter is solely a matter of your responsibility and judgment. This letter is not intended to establish a client relationship with you, nor is it intended to establish any obligation on my part to provide any future information to you regarding Mr. & Mrs. _____.

Discussion Points

9.2 Comfort or third-party letters

Increasingly, CPAs are receiving requests from clients, lenders, loan brokers, health insurance providers, adoption agencies, regulators and various other agencies to confirm client information. The requested information may relate to a pending loan, employee medical insurance, child adoption applications or use-tax certification. In most cases, CPAs are asked to provide a confirmation letter containing specific language, a verification statement, a comfort letter, or a certification form (collectively “Verification Documents”).

- *What is a comfort letter and how is it used?*
- *If you do verify a comfort letter, are you attesting to client information that you haven’t audited?*
- *How do you help your client? What information can you provide?*
- *How do you protect client privileges?*

Advertising/Advertisements

Other responsibilities are deemed more practical. One of these responsibilities is in advertising.

Advertising or advertisements may not be:

- Fraudulent
- False
- Deceptive
- Misleading

The major points to consider for fraudulent, false, deceptive, or misleading include:

- a. Misrepresentation of facts

- b. Only partial disclosure of relevant facts
- c. False or unjustified expectations of beneficial assistance
- d. Appeals to:
 - (1) fears
 - (2) ignorance
 - (3) anxieties
- e. False claims on performance
- f. Misleading or deceptive claims
- g. Designations
- h. False information on fees or failure to disclose variables affecting fees

The terms, “advertisement,” “advertising,” and other such words have distinct meanings in F.A.C. 61H1-24.001.

CHAPTER 61H1-24

- 61H1-24.001 Advertising
- 61H1-24.002 Solicitation
- 61H1-24.003 Competitive Negotiation (Repealed)

61H1-24.001 Advertising

(1) No certified public accountant shall disseminate or cause the dissemination of any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading, if it, among other things:

- (a) Contains a misrepresentation of facts; or
- (b) Makes only a partial disclosure of relevant facts; or
- (c) Creates false or unjustified expectations of beneficial assistance; or
- (d) Appeals primarily to a layperson's fears, ignorance, or anxieties regarding his state of financial well-being; or
- (e) Contains any representation or claims, as to which the certified public accountant, referred to in the advertising, does not expect to perform; or

(f) Contains any other representation, statement, or claim which misleads or deceives; or

(g) In the event that a certified public accountant uses the term "specialty" or “specialist” or any other term tending to indicate an advanced standing in any aspect of the practice of public accountancy, in any advertisement or offering to the public, the advertisement must state that the use of the term is a self-designation and is not sanctioned by the state or federal government; or

(h) Represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

(2) "Advertising" shall mean:

(a) Any statements, oral or written, disseminated to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling public accounting services, or offering to perform public accounting services, or including members of the public to enter into any obligation relating to such public accounting services. For purposes of this rule, oral or written statements include:

1. Business cards
2. Letterhead
3. Signs
4. Listings in telephone and other media or communication directories
5. Display of certificate or license from this or any other state
6. Business reports
7. Transmittal letters or other written communication issued or associated with accompanying financial statements
8. Brochures
9. Forms filed with state and federal regulatory agencies
10. Press releases
11. Paid promotional listing in any media

12. Display of membership in CPA associations

13. Listings in professional directories

14. Presentation during court proceedings

15. Website, e-mail, or any other electronic communication

(b) "Advertisement," "advertising" and "advertising as a part of a certified public accountant's business activities" as defined terms by this rule does not include:

1. Verbal statements in a social context
2. Use of the designation by faculty members in an educational institution when functioning in the capacity of a faculty member, and
3. Use of the designation by authors when used only for identification as authors of books, articles or other publications, provided that such publications, do not offer the performance of services or the sale of products (other than books, articles or other publications).

History—New 12-4-79, Amended 2-3-81, 12-29-83, Formerly 21A-24.01, Amended 5-20-91, Formerly 21A-24.001, Amended 2-12-95, 5-7-96, 10-8-97, 11-18-07, 12-10-09.

A CPA may solicit an engagement or respond to a request either verbally or in writing in accordance with F.A.C. 61H1-24.001.

Discussion Points

9.3 Advertising

- *Who can call themselves a CPA?*
- *Can CPAs in private industry call themselves a CPA? Maybe/ maybe not. Why?*

61H1-24.002 Solicitation

(1) A certified public accountant may respond to any request for a proposal to provide public accounting services and may provide such services to those requesting it.

(2) A certified public accountant may solicit an engagement to perform public accounting services provided the licensee comply with 61H1-24.001 and provided the licensee does not use coercion, duress, compulsion,

intimidation, threats, or conduct that is overreaching, or vexatious or harassing.

(3) Any form of written communication to a potential client, invited or not, is permissible under this rule provided such communication conforms to the advertising guidelines of Rule 61H1-24.001.

History—New 12-4-79, Amended 2-3-81, Formerly 21A-24.02, 21A-24.002, Amended 11-30-93, 12-10-09.

The CPA has responsibilities not only to the clients but also for other persons. Any work performed in violation of the statutes or FAC is not permitted whether by the CPA or others on their behalf.

61H1-25.001 Responsibility for Other Persons

A certified public accountant shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the certified public accountant would place

him in violation of Chapters 455 and 473, F.S., or rules promulgated thereto.

History—New 12-4-79, Formerly 21A-25.01, 21A-25.001, Amended 10-20-09.

Administrative and Office Considerations

Other practical considerations include:

- Names
- Terms
- Branch Offices

Other considerations include administrative details such as:

- Licensure of Firm Names
- Licensure of changes by firms
- Notification of address changes

Chapter 61H1-26 Names, Terms, Branch Offices

- 61H1-26.001 Form of Practice and Name-Shared Office Space

- 61H1-26.002 Minimum Capitalization or Adequate Public Liability Insurance for Public Accounting Corporations, Limited Liability Companies (LLCs) and Partnerships (LLPs)
- 61H1-26.003 Licensure of Firm Names
- 61H1-26.004 Licensure of Changes by Firms
- 61H1-26.005 Notification of Address Change

61H1-26.001 Form of Practice and Name-Shared Office Space

(1) A Florida certified public accountant may practice public accounting, whether as an owner or employee, only in the form of a proprietorship, a partnership or a corporation, or a limited liability company. A Florida certified public accountant shall not allow any person to practice in his name that is not a partner or shareholder with him or in his employ. A Florida certified public accountant shall not practice under a name which is misleading or deceptive as to the legal form of the firm or as to persons who are partners, or shareholders of the firm or as to any other matter. In this regard:

(a) A Florida certified public accountant may practice public accounting under a fictitious name which is not misleading or deceptive as to the persons who are sole proprietors, partners, or shareholders; and

(b) A firm name may include the names of retired or deceased partners or shareholders or members who were active partners or shareholders or members of the entity. This provision permits a firm, in the same line of succession, to change from one form of business to another and continue to use the names of retired or deceased partners, shareholders or members.

(c) Use of the term “and Company” or “and Associates” requires at least one other fully employed Florida certified

public accountant or non-certified public accountant owner other than those named in the firm name; however, this rule does not preclude a Florida certified public accountant initially meeting this requirement from using the above-mentioned terms if the Florida certified public accountant subsequently does not fully employ at least one Florida certified public accountant other than those named in the firm name.

(d) A firm may use the term “Certified Public Accountants” in the firm's name if all owners are certified public accountants. If there are non-certified public accountant owners, the firm may use the terms “CPA Firm” “CPAs and Associates” or “Certified Public Accountants and Associates” provided the firm has more than one certified public accountant. Further, a certified public accountant firm with non-certified public accountant owners may not use the term Certified Public Accountants without indicating there are other owners such as Associates or Consultants.

(2) The term “certified public accountant(s)” or the abbreviation “CPAs” must appear with the name of a certified public accountant when used in connection with an expression of opinion.

(3) Florida certified public accountant may share office facilities provided there is adequate disclosure that would enable

a reasonable person to determine the practice is not associated with the profession or occupation not regulated by the Board, such as written agreements, signs, etc.

History—New 12-4-79, Amended 11-7-84, 10-28-85, Formerly 21A-26.01, Amended 10-20-86, 12-28-89, 7-1-91, 1-7-93, Formerly 21A-26.001, Amended 11-30-93, 12-30-97, 8-16-99, 9-20-00, 12-10-09.

61H1-26.002 Minimum Capitalization or Adequate Public Liability Insurance for Public Accounting Corporations, Limited Liability Companies (LLCs) and Partnerships (LLPs)

A public accounting corporation, LLC, or LLP shall not engage in the practice of public accounting in this state unless:

(1) Assets in excess of liabilities and professional liability insurance combined are at least equal to \$50,000 per shareholder, officer, member, or partner and any Florida licensed CPA to a maximum of \$2,000,000; or,

(2) It has an irrevocable letter of credit which meets the following criteria:

(a) The responsibility for repayment of any sums disbursed under the letter of credit is not an obligation of the CPA firm, its owners, or any entity affiliated with the CPA firm;

(b) The letter of credit contains an “evergreen clause,” which automatically renews the letter of credit unless the issuer of the letter of credit notifies the CPA firm and the Board within sixty (60) days of the decision not to renew; and

(c) The letter of credit is issued by a financial institution authorized to do so under applicable state or federal banking laws; or,

(3) The corporation, each shareholder, and each officer who has authority over the practice of public accountancy, the LLC or the limited liability company and each member of the LLC, or the LLP and each partner have executed the

waiver of limitation on liability approved by the Board which must be set forth as follows:

WAIVER ON LIMITATION OF LIABILITY

The shareholders, officers, members, or partners of _____ (Name of Firm), do jointly and severally covenant and agree that they will pay any award or judgment arising out of any claim the basis of which is grounded upon an allegation of negligence, incompetence, misconduct, fraud or deceit in the firm's or its owners', officers', members', or employees' practice of public accounting as soon as the same shall become payable regardless of any limitation on liability provided by Chapter 621 and Chapter 608, and Chapter 620, F.S. (1985). – 131 Unless executed by a partnership and its partners, the members intend this agreement as a mutual covenant of assumption and not as a partnership, but should any court of competent jurisdiction construe same to be a partnership then it is the intention of the parties that such partnership be limited in scope to the uses for which this contract is executed and no other. Any individual who, subsequent to the date of this instrument, becomes a shareholder, officer, member, or partner in _____ (Name of Firm), shall immediately become a party to this

waiver and be bound to the conditions thereof. Said shareholder, officer, member, or partner shall execute an amended Waiver on Limitation of Liability which shall become a part of the original Waiver on Limitation of Liability. We the undersigned shareholders, officers, members, or partners in

_____ (Name of Firm), do hereunto set our hands and seals to certify our acceptance of the Waiver on Limitation of Liability dated this _____ day of _____, 19____.

(Signatures of all shareholders, officers, members, or partners)

(4) For purposes of subsection 61H1-26.002(1), F.A.C., financial statements prepared to substantiate the excess of assets over liabilities must be submitted to the Board with the application for licensure. These Financial statements must be prepared in accordance with Generally Accepted Accounting Principles and Work-in-Process may be considered as an unbilled receivable together with an appropriate evaluation allowance.

History—New 12-4-79, Formerly 21A-26.02, Amended 10-20-86, Formerly 21A-26.002, Amended 11-30-93, 5-23-94, 6-10-96, 10-6-96, 12-30-97, 9-21-00.

AICPA Rulings and Interpretations on Ethics

ET Section 591 - Ethics Rulings on Other Responsibilities and Practices (Selected paragraphs.)

2. Fees: Collection of Notes Issued in Payment

.003

Question—A member's firm made arrangements with a bank to collect notes issued by a client in payment of fees due, and so advised the delinquent client. Is this procedure ethical?

.004

Answer—The procedure followed does not violate any provision of the Code.

3. Employment by Non-CPA Firm

.005

Question—A member is considering employment with a public accounting firm made up of one or more non-CPA practitioners. If he is employed by such a firm, what are his responsibilities under the Rules of Conduct?

.006

Answer—A member so employed must comply with all the Rules of Conduct. If he becomes a partner in such a firm, he will then in addition be held responsible for compliance with the Rules of Conduct by all persons associated with him.

38. CPA Title, Controller of Bank

.075

Question—A member not in public practice is controller of a bank. May the member permit the bank to use his CPA title on bank stationery and in paid advertisements listing the officers and directors of the bank?

.076

Answer—The use of the CPA title on bank stationery by a member not in public practice is proper. It would also be proper for the CPA title of the member to appear in paid advertisements of the bank that list the officers and directors.

78. Letterhead: Lawyer-CPA

.155

Question—May a member who is also admitted to the Bar represent himself on his letterhead as both an attorney and a CPA, or should he use separate letterheads in the conduct of the two practices?

.156

Answer—The Code does not prohibit the simultaneous practice of accounting and law by a member licensed in both professions. Either a single or separate letterheads may be used, provided the information with respect to the CPA designation complies with rule 502 (section 502.01). However, the member should also consult the rules of the applicable Bar Association.

136. Audit with Former Partner

.271

Question—A member's firm consisting of one certified and one noncertified partner has been dissolved. One account was retained which the two practitioners plan to continue to service together. Should the audit report be submitted on partnership stationery?

.272

Answer—It would appear proper for the audit to be carried out jointly by the two former partners. The opinion should be presented on plain paper and signed somewhat as follows:

John Doe, Certified Public Accountant

Richard Roe, Accountant

Such a signature would leave no doubt as to whether a partnership existed, and the client and others would have the assurance that both accountants participated in the audit.

137. Nonproprietary Partners

.273

Question—A member's firm wishes to institute the designation "nonproprietary partner" to describe certain high-ranking staff who were former partners of merged firms who did not qualify for partnership in the merging firm. With this title, they would be eligible to participate in the firm's pension plan. In holding themselves out

to the public they would be required to use this designation. Is there any impropriety in the proposed title?

.274

Answer—The use of the designation "partner" should be restricted to those members of the firm who are legally partners. Those who are not parties to the partnership agreement should not hold themselves out in any manner which might lead others to believe that they are partners. The use of the designation "nonproprietary partner" by one who is not in fact a partner is considered misleading and therefore is not permitted.

138. Partner Having Separate Proprietorship

.275

Question—May a member be a partner of a firm of public accountants, all other members of which are noncertified, and at the same time retain for himself a practice of his own as a CPA?

.276

Answer—Rule 505 (section 505.01) would not prohibit such a practice. However, clients and others interested should be advised about the dual position of the member to prevent any misunderstanding or misrepresentation.

141. Responsibility for Non-CPA Partner

.281

Question—Is a member who has formed a partnership with a noncertified public accountant ethically responsible for all the acts of the partnership?

.282

Answer—Yes. If the noncertified partner should violate the Code, the member would be held accountable.

145. Firm Name of Merged Partnerships

.289

Question—When two partnerships merge, is it permissible for the newly merged firm to practice under a title which includes the name of a partner who had retired from one of the two firms prior to the merger?

.290

Answer—Rule 505 (section 505.01 of the Code of Professional Conduct states that partnerships may practice under a firm title which includes the name or names of former partners. Since the retired partner was once a partner in one of the merged firms, it would be proper for his name to appear in the title of a newly created firm.

183. Use of the AICPA Personal Financial Specialist Designation

.365

Question—In what circumstances may a firm include the AICPA-awarded designation "Personal Financial Specialists" on the firm's letterhead and in marketing materials?

.366

Answer—It is permissible under rule 502 (section 502.01) for the designation "Personal Financial Specialists" (PFS) to be used on a firm's letterhead and in marketing materials if all partners or shareholders of the firm currently have the AICPA-awarded designation. An individual member who holds the designation may use it after his or her name.

184. Definition of the Receipt of a Contingent Fee or a Commission

.367

Question—Rules 302 (section 302.01) and 503 (section 503.01) prohibit, among other acts, the receipt of contingent fees for the performance of certain services and the receipt of a commission for the referral of products or services under certain circumstances. When is a contingent fee or commission deemed to be received?

.368

Answer—A contingent fee or commission is deemed to be received when the performance of the related services is complete and the fee or the commission is determined. For example, if in one year a member sells a life insurance policy to a client and the member's commission payments are determined to be a fixed percentage of future years' renewal premiums, the commission is deemed to be received in the year the policy is sold.

185. Sale of Products to Clients

.369

Question—May a member purchase a product from a third-party supplier and resell the product to a client without violating rule 503 (section 503.01)?

.370

Answer—Yes. If a member purchases a product and resells it to a client, any profit on the sale would not constitute a commission. Purchasing entails taking title to the product and having all the associated risks of ownership.

186. Billing for Subcontractor's Services

.371

Question—A member has contracted with a computer-hardware maintenance servicer to provide support for a client's computer operations. Would it be a violation of rule 503 (section 503.01) for that member to bill the client a higher service fee than that charged the member by the service provider?

.372

Answer—No. The increased fee would not constitute a commission.

187. Receipt of Contingent Fees or Commissions by Member's Spouse

.373

Question—May a member's spouse provide services to the member's attest client for a contingent fee or refer products or services for a commission to or from the member's attest client without causing the member to be in violation of rule 302 (section 302.01) or rule 503 (section 503.01)?

.374

Answer—Yes, if the activities of the member's spouse are separate from the member's practice and the member is not significantly involved in those activities. The member, however, should consider whether a conflict of interest may exist as described in rule 102 (section 102.01) and interpretation 102-2 (section 102.03).

188. Referral of Products of Others

.375

Question—A member refers computer products of wholesalers to clients of the firm through distributors and agents. A payment is received by the member from the wholesaler if the clients purchase the computer products. Must the member consider rule 503 (section 503.01) in connection with this payment?

.376

Answer—Yes. Section 91.02 (section 91.02) of the Code of Professional Conduct provides that a member shall not permit others to perform acts on behalf of the member that, if carried out by the member, would place the member in violation of the rules. Therefore, the member would be held responsible for the actions of the distributors and agents.

Rule 503 (section 503.01) provides that, if a member or the member's firm performs for a client a service described in rule 503, the member may not recommend or refer to that client for a commission any product or service, or receive a commission for a recommendation or referral. This prohibition applies during the period in which the member is engaged to perform any of the services described in rule 503 and during the period covered by any historical financial statements in such services.

If the products are referred on a commission basis to clients for which the member is not engaged to perform any of the services described in rule 503, rule 503 would not be violated as long as the commission is disclosed to the client. However, any subsequent performance of services described in rule 503 during a period in which the commission was received would constitute a violation of rule 503.

189. Requests for Records Pursuant to Interpretation 501-1

.377

Question—Individuals associated with a client entity who are currently on opposing sides in an internal dispute have each issued separate requests calling for the member to supply them with records pursuant to interpretation 501-1 (section 501.02). Does the member have to comply with all such requests?

.378

Answer—In providing professional services to individuals, partnerships, or corporations, a member will usually deal with an individual who has been designated or held out as the client's representative. Such a representative might include, for example, a general partner or a majority shareholder. A member who has provided the records to the individual designated or held out as the client's representative has no obligation to provide such records to other individuals associated with the client.

190. Non-CPA Partner

.379

Question—May a member who is in partnership with non-CPAs sign reports with the firm name and below it affix his own signature with the designation "Certified Public Accountant"?

.380

Answer—This would not be improper, provided it is clear that the partnership itself is not being held out as composed entirely of CPAs.

191. Member Removing Client Files from an Accounting Firm

.381

Question—If the relationship of a member who is not an owner of a firm is terminated, may he or she take or retain originals or copies from the firm's client files or proprietary information without the firm's permission?

.382

Answer—No, except where permitted by contractual arrangement.

192. Commission and Contingent Fee Arrangements with Nonattest Client

.383

Question—A member or member's firm (member) provides for a contingent fee investment advisory services, or refers for a commission products or services of a nonclient or a nonattest client, to the owners, officers, or employees of an attest client or to a nonattest client employee benefit plan sponsored by an attest client. Would the member be considered to be in violation of either rule 302 (section 302.01) or rule 503 (section 503.01)?

.384

Answer—No. The member would not be in violation of either rule 302 or rule 503 provided that, with respect to rule 503, the member discloses the commission to the owners, officers, or employees or to the employee benefit plan. The member should also consider the applicability of interpretation 102-2, *Conflicts of Interest* (section 102.03), and his or her professional responsibility to clients under Rule 301, *Confidential Client Information* (section 301.01).

References

AICPA

When parties come knocking for client records, Joseph Wolfe; Journal of Accountancy, February 2013

<http://www.journalofaccountancy.com/Issues/2013/Feb/20126773.htm>

AON

Guidance from AON regarding 'comfort letters'

<http://www.cpai.com/show-article?id=141#.UX6ay8r-ka4>

FICPA

Simple? Maybe not. Use caution with requests for third-party communications, by
Steven M. Platau, JD, CPA, ABV; Florida CPA Today, May-June 2012

<http://www.ficpa.org/Content/Files/Docs/Flipbooks/2012/MayJun/>

Statutory References

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ET Section 501 - Acts Discreditable

http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/et_500.aspx

Notes

CHAPTER 10

Future Implications

Learning Objectives

The purpose of Chapter 10 is to review the CPA profession's future and to discuss the ethical provisions and their effect on public accounting. The learning objectives for this chapter are:

1. Name several changes to the accounting profession that could occur within the next 10 years.
2. Highlight several major differences between the IFAC and AICPA ethics codes of conduct.
3. Discuss aspects of the *CPA Horizons 2025 Project*.

Chapter Content

Our Future

To prophesy is extremely difficult – especially with regard to the future.

Chinese Proverb

We can expect many, many changes in the near future for CPAs.

Recent changes that have occurred include:

1. Quadropoly
2. XBRL
3. GAAP Codification
4. Mobility
5. International Implications

Comparison of IFAC and AICPA Ethics Standards

The AICPA and the International Federation of Accountants (IFAC) have begun to converge the IFAC's International Ethics Standards Board for Accountants (IESBA) **Code of Ethics for Professional Accountants (IESBA Code)** and the AICPA's **Code of Professional Conduct (AICPA Code)**.

On April 19, 1917, the AICPA's predecessor organization, the American Institute of Accountants, adopted eight rules of conduct that fit on one sheet of paper. Over time, the rules evolved. In 1973, they were codified into the current AICPA Code.

Almost 100 years – and many sheets of paper – later, the AICPA Code and related guidance is ripe for reorganization.

The standard setting organizations in more than 100 countries have adopted the IFAC's Code of Ethics for Professional Accountants and many others are in the process of converging with the code. The code will impact those in public practice, business, academia, and government.

The IFAC code uses a conceptual framework approach to evaluate relationships or circumstances that raise ethical issues. Most of the same issues in the AICPA's Code and the IFAC's Code are addressed like:

- Independence
- Objectivity
- Due care
- Confidentiality

The International Ethics Standards Board for Accountants establishes and maintains the requirements in the IFAC Code.

Like the much larger initiative to create the *FASB Accounting Standards Codification*[™] from the accounting literature, the AICPA's ethics literature needs to undergo a transformation.

Existing in multiple locations, similar subject matters are sometimes disjointed, making it difficult for members to know for certain whether they have considered all the relevant matters.

As a result, in 2009 the AICPA launched the Codification Project to reformat and enhance its ethics literature. As part of this effort, the AICPA will continue to converge the *Code of Professional Conduct* with international standards where appropriate.

Starting in 2001, the AICPA Professional Ethics Executive Committee (PEEC) sought to align or “converge” the AICPA Code with the *Code of Ethics for Professional Accountants*, which is issued by the International Ethics Standards Board for Accountants (IESBA).

As a member body of the International Federation of Accountants (IFAC), the AICPA agrees to have ethics standards that are at least as stringent as the IESBA ethics

standards. The PEEC will continue to consider convergence issues as part of the Codification effort.

Some confusion exists around the meaning of “convergence” – and rightly so as the term is subject to some interpretation. In this context, “convergence” means the PEEC may propose changes to AICPA guidance that is less strict than guidance in the IESBA Code or does not exist in the current Code.

Of course, any proposed changes to the AICPA Code resulting from convergence efforts will follow full due process as set out in the AICPA Bylaws; this includes exposure of the proposed standard to the membership and consideration of all comments at PEEC meetings, which are open to the public.

Convergence does *not* mean that the PEEC will adopt lower standards when international standards are less strict. Rather, the PEEC will maintain the high ethical standards of the current AICPA Code.

In an article in the October 2010 issue of the *Journal of Accountancy*, “**Comparing the Ethics Codes: AICPA and IFAC**”, the reference is made to the phrase “More similar than different”.

The IESBA Code is in three parts:

1. Part A – applies to all professional accountants;
2. Part B – applies only to persons in public accounting;
3. Part C – applies to persons in business (everyone not in public)

The AICPA does divide its Code in this way.

The following table illustrates certain requirements in the IESBA Ethics that do NOT appear in the AICPA Code:

Figure 10.1: IESBA Ethics Requirements

IESBA Provision	Summary	Comments
Professional Appointment §210	Ethical considerations related to the acceptance and continuance of client engagements and responsibilities of successor/predecessor accountants	Addressed by the AICPA in SQCS 7, Rule 201-A, Rule 201-B and Rule 501
Second Opinions §230	Ethical considerations related to the provision of a second opinion on the application of accounting, auditing, reporting, or other standards or principles to specific circumstances or transactions of entity not an existing client.	Addressed in AICPA Rule 102 and Rule 201-B.

Custody of Assets §270	Ethics relating to holding client assets.	AICPA Rule 102, Rule 201-B, and Rule 501 would apply
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Figure 10.2: IESBA and AICPA Ethics Comparisons

Provision	IESBA Code – Independence Requirements	AICPA Code	Discussion
Related entities	Except for “listed entities,” the term “audit client” includes directly or indirectly controlled entities by the audit client. Restrictions apply to both.	Generally does not apply to related entities.	The IESBA Code is more restrictive than the AICPA Code. The PEEC is studying the issue.
Listed Entities on Non-US Exchanges	Listed entities anywhere in the world are considered Public Interest Entities and subject to more restrictive independence rules.	Members who audit an entity subject to other, Non-AICPA independence rules must apply those rules also.	Requirements for listed entities in the US meet or exceed the IESBA independence requirements for audits of PIEs.
Documentation of Independence Matters	A professional accountant must document his or her determination that, after significant analysis of a threat to independence, it was not necessary to apply safeguards because the threat was already at an acceptable level. (§290.29(b))	IESBA Code requirement is not in the AICPA Code.	The AICPA Code does not require documentation unless the member concluded that the threat required safeguards.
Entertainment or Hospitality from Clients	Firms and audit teams may only accept entertainment from a client if value is trivial and inconsequential. (§290.230)	Independence would not be considered impaired if the entertainment was reasonable.	The IESBA is a lower threshold than the AICPA.
Corporate Finance or Tax Advisory Services	Professional accountants may not perform corporate finance or tax advisory services for an audit client under several conditions.	Members must only meet the general requirements for non-attest services.	The IESBA is more restrictive.

CPA Horizons 2025 Report

Over a six-month period, CPA Horizons 2025 sought the insights of CPAs on current and forecasted trends that will surely affect not only the profession, but also the world. Through an online survey, 16 in-person forums and online discussion and focus groups, about 5,600 CPAs weighed in and generated more than 75,000 comments about the current state and future of their profession.

The research shows that the entire profession—from sole practitioners to medium and large firm members to members in business and industry to those in government and academia—has a bright future and will need to respond quickly and competitively to the shifting ground on political, economic, social, technological and regulatory fronts.

Insights and directions related to opportunities and challenges for the profession over the next 15 years emerged. Using these insights and directions as a road map, CPAs and the accounting profession will mold their future.

- CPAs overwhelmingly agreed that the profession’s Core Purpose, “Making sense of a changing and complex world,” remains relevant today and for the future.
- The profession’s core values and competencies resonate with CPAs conceptually, but the definitions need to be refined and updated to reflect the 21st century.
- The services provided by CPAs have become so varied and diverse that the concept of core services is no longer representative of the profession and has been dropped.

For more information, visit the AICPA website at <http://www.aicpa.org/research/cpahorizons2025>

So, where are we going by 2025?

1. TECHNOLOGY

What is the impact of Technology on the profession?

1. CPAs must stay current with, embrace and exploit technology for their benefit for increased efficiency and expansion of services.
2. The profession must find solutions to offer investors and stakeholders up-to-date, real-time financial information and to increase transparency.
3. CPAs must embrace mobile technologies and social media to modernize and enhance interaction and collaboration with clients and colleagues.
4. Fraud may be easier to commit and more difficult to prevent and detect. CPAs must continue to be vigilant in ensuring data is captured and managed properly and protected from malfeasance.

2. PRE-CERTIFICATION AND LIFELONG LEARNING

What is the impact of Life-Long Learning on the profession?

1. CPAs must devote more time to staying current with regulations and standards and social, economic, technological and political trends domestically and abroad.
2. CPAs must further develop interpersonal skills to enhance relationships with colleagues, clients, businesses and employers.
3. Real-time learning in the workplace will change the way CPAs learn and will help them adopt and adapt quickly and knowledgeably to ever-changing circumstances.
4. Requirements for new CPAs must remain rigorous and demanding and be practical and relevant.
5. New CPAs must have a broad knowledge of business and soft skills and not simply focus on technical accounting.

3. WORLDWIDE PROFESSION

What is the impact of a Worldwide Profession?

1. CPAs must be increasingly aware of international business issues and trends.
2. CPAs must assess the trend toward outsourcing overseas and create opportunities to expand services to serve these markets.
3. CPAs must continue to market the quality and value of their services in order to expand and thrive globally.

4. PRIDE IN THE PROFESSION

What is the impact of Pride on the profession?

1. The profession must continue to advocate on behalf of itself to ensure continued recognition as a trusted advisor.
2. CPAs must uphold the integrity of the profession and maintain high standards in an ever-changing environment and in cultures where business practices differ from U.S. practices.

5. TRUSTED ATTESTER

What is the impact of Trusted Attester on the profession?

1. The profession must stay vigilant in defending its unique role as providers of audit and attest services.

2. All CPAs benefit from the public trust that is rooted in the provision of audit and assurances services.
3. Audit and attest functions must evolve to meet changing regulatory demands and client and business needs.

6. TRUSTED ADVISOR

What is the impact of Trusted Advisor on the profession?

1. CPAs must continue to evolve as strategic partners of clients, business and employers, applying multidisciplinary and integrated problem solving to expand traditional services and enhance nontraditional offerings and the perception of trusted advisor.

7. MARKET PERMISSIONS

What is the impact of Market Permissions on the profession?

1. Emerging opportunities for specialization will allow CPAs to strengthen their expertise and provide additional value to clients, employers and business.
2. The profession must continue to evaluate which services it offers locally and globally and how it will deliver these services to adapt to the needs of clients, employers and business.

8. MARKETPLACE

What is the impact of Marketplace on the profession?

1. The exact nature of the work that CPAs perform must evolve to respond to shifts in business, society and technology.
2. These changes will offer opportunities to enhance the value of CPA services, positioning CPAs to be leaders in helping clients and employers adapt to change while also responding to change themselves.
3. Lifelong learning will take on greater importance as a way for CPAs to stay up-to-date as the pace of change accelerates.

9. VALUE PROPOSITION

What is the impact of Value Proposition on the profession?

1. By listening to and understanding the needs and challenges of employers and clients, opportunities for CPAs to develop services that align with Core Values will emerge.

2. The profession must spend more time demonstrating their value to clients, businesses and the public about the role and value of the CPA in order to thrive amid increased competition and economic pressures.

10. DEMOGRAPHIC SHIFTS

What is the impact of Demographic Shifts on the profession?

1. The profession must strive to reflect the demographic shifts of incoming accounting students, clients, business and society.
2. Programs offered to support minorities; women and young CPAs in the workplace must be more widely implemented throughout the profession.
3. Experienced and older CPAs must continue to mentor young CPAs and identify leadership and advancement opportunities that will foster stronger relationships and loyalty.
4. In order to attract and retain younger generations, employers must increase flexible work arrangements and work-at-home options.
5. The profession must continue to support and enhance programs that build awareness of the CPA profession to young audiences.

Embracing The Future - What Have We Learned?

- *It is a small world after all* — every business is becoming a global business
- *The future is here* — embracing the future now will ensure viability in the long run
- *Change is inevitable* — technology already is changing the way we work ... and the change will continue
- *Generations are working side by side* — Baby Boomers are not retiring and Millennials are bringing a new set of skills and ideals to the workplace

What Must We Do?

- *Be open to change* — embrace, don't fear, the future
- *Be nimble* — adapt traditional services and establish new ones to take advantage of change
- *Be collaborative* — work with each other and with the global community to shape and execute the standards and services that will emerge over the next decade

- ***Be forward-thinking*** — assess and evaluate the current and future environments and plan accordingly

How Do We Do It?

- ***Technology***: Address security and privacy concerns; adapt traditional services; utilize state-of-the-art tools to reach out to new markets
- ***Education***: Balance judgment with technical skills; teach soft skills; stay ahead of the curve on regulations and standards
- ***Globalization***: Understand international issues, trends, standards and regulations; identify new markets; explore new job opportunities
- ***Promotion***: Market the profession's virtues of integrity, objectivity and trust to local, national and international audiences
- ***Collaboration***: Understand the different perceptions and realities of the generations and find ways to bridge the gap and take advantage of the best each can offer
- ***Integration***: Review our competencies and align them with new realities; enhance our role as a business advisor
- ***Adaptation***: Address changes in the marketplace, economy, business and regulations; immerse ourselves in domestic and international trends
- ***Competition***: Understand the numerous choices available to clients and employers; market the CPA value

Discussion Points

10.1 Future Trends

The AICPA Horizons 2025 project outlined a number of trends noted by CPAs from around the country for the future.

*What trends are you already observing in the workplace or with your staff?
Are there any trends you feel may not materialize even though some have reported early observations?*

Welcome to the future!

References

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Ethics

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APPENDIX A

Florida Independence Standards

Standards for Determining Independence in the Practice of Public Accountancy for CPAs Practicing Public Accountancy in the State of Florida

(Words that appear in bold (initially) are defined in the *Definitions* section at the end of this document.)

Section 101-1. Independence-General Provisions

Independence shall be considered to be impaired if:

(1) During the **period of the professional engagement** a covered licensee:

(a) Had or was committed to acquire any direct or material indirect financial interest in the **client**.

(b) Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client and

1. The covered licensee had the authority to make (individually or with others) investment decisions for the trust or estate; or

2. The trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership interests; or

3. The value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate.

(c) Had a **joint closely held investment** that was material to the covered licensee.

(d) Except as specifically permitted in Section 101-5 herein, had any **loan** to or from the client, any officer or director of the client, or any individual owning ten percent or more of the client's outstanding equity securities or other ownership interests.

(2) During the period of the professional engagement, a firm, a **partner** or professional employee of the **firm**, his or her **immediate family**, or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.

(3) During the period covered by the **financial statements** or during the period of the professional engagement, a partner or professional employee of the firm was simultaneously associated with the client as a/an

- (a) Director, officer, or employee, or in any capacity equivalent to that of a member of management;
- (b) Promoter, underwriter, or voting trustee; or
- (c) Trustee for any pension or profit-sharing trust of the client.

Application of the Independence Rules to Covered Licensees Formerly Employed by a Client or Otherwise Associated With a Client

An individual who was formerly (i) employed by a client or (ii) associated with a client as a(n) officer, director, promoter, underwriter, voting trustee, or trustee for a pension or profit-sharing trust of the client would impair his or her firm's independence if the individual.

- (1) Participated on the **attest engagement team** or was an **individual in a position to influence the attest engagement** for the client when the **attest engagement** covers any period that includes his or her former employment or association with that client; or
- (2) Was otherwise a covered licensee with respect to the client unless the individual first dissociates from the client by

- (a) Terminating any relationships with the client described in Subsection 101-1(1)(c);
- (b) Disposing of any direct or material indirect financial interest in the client;
- (c) Collecting or repaying any loans to or from the client, except for loans specifically permitted or grandfathered under Section 101-5;
- (d) Ceasing to participate¹ in all employee benefit plans sponsored by the client, unless the client is legally required to allow the individual to participate in the plan (for example, COBRA) and the individual pays 100 percent of the cost of participation on a current basis;
- (e) Liquidating or transferring all vested benefits in the client's defined benefit plans, defined contribution plans, deferred compensation plans, and other similar arrangements at the earliest date permitted under the plan. However, liquidation or transfer is not required if a penalty² significant to the benefits is imposed upon liquidation or transfer.

Application of the Independence Rules to a Covered Licensee's Immediate Family

Except as stated in the following paragraph, a covered licensee's immediate family is subject to Rule 61H1-21.001 and these Standards.

¹ If a licensee participates in or receives benefits from a health and welfare plan (the "plan") sponsored by a client and that licensee is a covered licensee then that covered licensee's participation in a plan sponsored by a client would impair independence with respect to the client sponsor and the plan. However, if the covered licensee's participation in the plan, or benefits received thereunder, arises as a result of the permitted employment of the covered licensee's immediate family, independence would not be considered to be impaired provided that the plan is normally offered to all employees in equivalent employment positions.

² A penalty includes an early withdrawal penalty levied under the tax law but excludes other income taxes that would be owed or market losses that may be incurred as a result of the liquidation or transfer.

The exceptions are that independence would not be considered to be impaired solely as a result of the following:

(1) An individual in a covered licensee's immediate family was employed by the client in a position other than a **key position**.

(2) In connection with his or her employment, an individual in the immediate family of one of the following covered licensees participated in a retirement, savings, compensation, or similar plan that is a client, is sponsored by a client, or that invests in a client (provided such plan is normally offered to all employees in similar positions):

(a) A partner or **manager** who provides ten or more hours of non-attest services to the client; or

(b) Any partner in the **office** in which the lead attest engagement partner primarily practices in connection with the attest engagement.

For purposes of determining materiality under this Rule the financial interests of the covered licensee and his or her immediate family should be aggregated.

Application of the Independence Rules to Close Relatives

Independence would be considered to be impaired if—

(1) An individual participating on the attest engagement team has a **close relative** who had

(a) A key position with the client, or

(b) A financial interest in the client that

(i) Was material to the close relative and of which the individual has knowledge; or

(ii) Enabled the close relative to exercise **significant influence** over the client.

(2) An individual in a position to influence the attest engagement or any partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement has a close relative who had

(a) A key position with the client; or

(b) A financial interest in the client that

(i) Was material to the close relative and of which the individual or partner has knowledge; and

(ii) Enabled the close relative to exercise significant influence over the client.

Other Considerations

It is impossible to enumerate all circumstances in which the appearance of independence might be questioned. Licensees should consider whether personal and business relationships between the licensee and the client or an individual associated with the client would lead a reasonable person aware of all the relevant facts to conclude that there is an unacceptable threat to the licensee's and the firm's independence.

Section 101-2. Employment or Association with Attest Clients

A firm's independence will be considered to be impaired with respect to a client if a partner or professional employee leaves the firm and is subsequently employed by or associated with that client in a key position unless all of the following conditions are met: would impair independence with respect to the client sponsor and the plan. However, if the covered licensee's participation in the plan, or benefits received there under, arises as a

result of the permitted employment of the covered licensee's immediate family, independence would not be considered to be impaired provided that the plan is normally offered to all employees in equivalent employment positions.

2) A penalty includes an early withdrawal penalty levied under the tax law but excludes other income taxes that would be owed or market losses that may be incurred as a result of the liquidation or transfer.

1. Amounts due to the former partner or professional employee for his or her previous interest in the firm and for unfunded, vested retirement benefits are not material to the firm, and the underlying formula used to calculate the payments remains fixed during the payout period. Retirement benefits may be adjusted for inflation and interest may be paid on amounts due.

2. The former partner or professional employee is not in a position to influence the accounting firm's operations or financial policies.

3. The former partner or professional employee does not participate in or appear to participate in, and is not associated with the firm, whether or not compensated for such participation or association, once employment or association with the client begins. An appearance of participation or association results from such actions as:

- The individual provides consultation to the firm.
- The firm provides the individual with an office and related amenities (for example, secretarial and telephone services).
- The individual's name is included in the firm's office directory.
- The individual's name is included as a member of the firm in other membership lists of business, professional, or civic organizations, unless the individual is clearly designated as retired.

4. The ongoing attest engagement team considers the appropriateness or necessity of modifying the engagement procedures to adjust for the risk that, by virtue of the former partner or professional employee's prior knowledge of the audit plan, audit effectiveness could be reduced.

5. The firm assesses whether existing attest engagement team members have the appropriate experience and stature to effectively deal with the former partner or professional employee and his or her work, when that person will have significant interaction with the attest engagement team.

6. The subsequent attest engagement is reviewed to determine whether the engagement team members maintained the appropriate level of skepticism when evaluating the representations and work of the former partner or professional employee, when the person joins the client in a key position within one year of disassociating from the firm and has significant interaction with the attest engagement team. The review should be performed by a professional with appropriate stature, expertise, and objectivity and should be tailored based on the position that the person assumed at the client, the position he or she held at the firm, the nature of the services he or she provided to the client, and other relevant facts and circumstances. Appropriate actions, as deemed necessary, should be taken based on the results of the review.

Responsible members within the firm should implement procedures for compliance with the preceding conditions when firm professionals are employed or associated with attest clients.

With respect to conditions 4, 5 and 6, the procedures adopted will depend on several factors, including whether the former partner or professional employee served as a member of the engagement team, the positions he or she held at the firm and has accepted at the client, the length of time that has elapsed since the professional left the firm, and the circumstances of his or her departure³.

Considering Employment or Association with the Client

When a member of the attest engagement team or an individual in a position to influence the attest engagement intends to seek or discuss potential employment or association with an attest client, or is in receipt of a specific offer of employment from an attest client, independence will be impaired with respect to the client unless the person promptly reports such consideration or offer to an appropriate person in the firm, and removes himself or herself from the engagement until the employment offer is rejected or employment is no longer being sought. When a covered licensee becomes aware that a member of the attest engagement team or an individual in a position to influence the attest engagement is considering employment or association with a client, the covered licensee should notify an appropriate person in the firm.

The appropriate person should consider what additional procedures may be necessary to provide reasonable assurance that any work performed for the client by that person was performed with objectivity and integrity as an inadvertent and isolated failure to meet conditions 4, 5 and 6, would not impair independence provided that the required procedures are performed promptly upon discovery of the failure to do so, and all other provisions of Section 101-2 are met required under Rule 61H1-21.002. Additional procedures, such as re-performance of work already done, will depend on the nature of the engagement and individual involved.

Section 101-3. Performance of Nonattest Services.

Before a covered licensee or firm performs nonattest services for an attest client⁴, the covered licensee shall determine that the requirements described in this section have been met. In cases where the requirements have not been met during the period of the professional engagement or the period covered by the financial statements, the covered licensee's independence would be impaired.

³ An inadvertent and isolated failure to meet conditions 4, 5, and 6, would not impair independence provided that the required procedures are performed promptly upon discovery of the failure to do so, and all other provisions of Section 101-2 are met.

⁴ A covered licensee who performs a compilation engagement for a client should modify the compilation report to indicate a lack of independence if the covered licensee or firm does not meet all of the conditions set out in this section when providing a nonattest service to that client (see Statement of Standards for Accounting and Review Services No. 1, *Compilation and Review of Financial Statements*.)

Engagements Subject to Independence Rules or Certain Regulatory Bodies.

This section requires compliance with independence regulations of authoritative regulatory bodies (such as the Securities and Exchange Commission [SEC], the General Accounting Office [GAO], the Department of Labor [DOL], where a covered licensee performs nonattest services for a client and is required to be independent of the client under the regulations of the applicable regulatory body. Accordingly, failure to comply with the nonattest services provisions contained in the independence rules of the applicable regulatory body that are more restrictive than the provisions of this interpretation would constitute a violation of this section if so determined by the applicable regulatory body.

General Requirements for Performing Nonattest Services

- (1) The covered licensee should not perform management functions or make management decisions for the attest client. However, the covered licensee may provide advice, research materials, and recommendations to assist the client's management in performing its functions and making decisions.
- (2) The client must agree to perform the following functions in connection with the engagement to perform nonattest services:
 - (a) Make all management decisions and perform all management functions;
 - (b) Designate a competent employee, preferable within senior management, to oversee the services;
 - (c) Evaluate the adequacy and results of the services performed;
 - (d) Accept responsibility for the results of the services; and
 - (e) Establish and maintain internal controls, including monitoring ongoing activities.

The covered licensee should be satisfied that the client will be able to meet all of these criteria and make an informed judgment on the results of the member's nonattest services. In assessing the competency of the client's designated employee, the covered licensee should be satisfied that such individual understands the services to be performed sufficiently to oversee them. In cases where the client is unable or unwilling to assume these responsibilities (for example, the client does not have an individual with the necessary competence to oversee the nonattest services provided, or is unwilling to perform such functions due to lack of time or desire), the covered licensee's or firm's provision of these services would impair independence.

- (3) Before performing nonattest services, the covered licensee should establish and document in writing⁵ the licensee's or firm's understanding with the client (board of directors, audit committee, or management, as appropriate in the circumstances) regarding the following:
 - (a) Objective of the engagement
 - (b) Services to be performed

⁵ An isolated and inadvertent failure to prepare the required documentation would not impair independence, provided that the licensee did establish the understanding with the client, the licensee documents the understanding promptly upon discovery of the failure to do so, and all other provisions of the interpretation are met.

- (c) Client's acceptance of its responsibilities
 - (d) Covered licensee's or firm's responsibilities
 - (e) Any limitations of the engagement
- (4) A covered licensee who performs a compilation engagement for a client should modify the compilation report to indicate a lack of independence if the covered licensee or firm does not meet all of the conditions set out in this section when providing a nonattest service to that client (see Statement of Standards for Accounting and Review Services No. 1, *Compilation and Review of Financial Statements*).
- (5) An isolated and inadvertent failure to prepare the required documentation would not impair independence, provided that the licensee did establish the understanding with the client, the licensee documents the understanding promptly upon discovery of the failure to do so, and all other provisions of the interpretation are met.

The documentation requirement does not apply to certain routine activities performed by the covered licensee such as providing advice and responding to the client's technical questions as part of the normal client-covered licensee relationship.

General Activities

The following are some general activities that would impair a covered licensee's or firm's independence:

- Authorizing, executing, or consummating a transaction, otherwise exercising authority on behalf of a client, or having the authority to do so
- Preparing source documents⁶, in electronic or other form, evidencing the occurrence of a transaction
- Having custody of client assets
- Supervising client employees in the performance of their normal recurring activities
- Determining which recommendations of the covered licensee should be implemented
- Reporting to the board of directors on behalf of management
- Servicing as a client's stock transfer or escrow agent, registrar, general counsel or its equivalent

Specific Examples of Nonattest Services

The examples in the following table identify the effect that performance of certain nonattest services for an attest client can have on a covered licensee's or firm's independence. These examples presume that the general requirements in the previous subsection "**General Requirements for Performing Nonattest Services**" have been met and are not intended to be all-inclusive of the types of nonattest services performed by covered licensee.

⁶ Source documents are the documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports, which do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll time cards, and customer orders.

Impact on Independence of Performance of Nonattest Services

<i>Type of Nonattest Service</i>	<i>Independence would NOT be Impaired</i>	<i>Independence would be Impaired</i>
Bookkeeping	<ul style="list-style-type: none"> • Record transactions for which management prepare financial statements • Post client-approved entries to a client's trial balance. • Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the client provided the client reviews the entries and the covered licensee is satisfied that management understands the nature of the proposed entries and the impact the entries have on the financial statements. 	<ul style="list-style-type: none"> • Determine or change journal entries, account codings or classifications for transactions, or other accounting records without obtaining client approval. • Authorize or approve transactions. • Prepare source documents. • Make changes to source documents without client approval.
Payroll and other disbursements	<ul style="list-style-type: none"> • Using payroll time records provided and approved by the client, generate unsigned checks, or process client's payroll. • Transmit client-approved payroll or other disbursement information to a financial institution provided the client has authorized the member to make the transmission and has made arrangements for the financial institution to limit the corresponding individual payments as to amount and payee. In addition, once transmitted, the client must authorize the financial institution to process the information. 	<ul style="list-style-type: none"> • Accept responsibility to authorize payment of client funds, electronically or otherwise, except as specifically provided for with respect to electronic payroll tax payments. • Accept responsibility to sign or cosign client checks, even if only in emergency situations. • Maintain a client's bank account or otherwise have custody of a client's funds or make credit or banking decisions for the client. • Sign payroll tax return on behalf of client management. • Approve vendor invoices for payment.

<i>Type of Nonattest Service</i>	<i>Independence would NOT be Impaired</i>	<i>Independence would be Impaired</i>
Payroll and other disbursements, cont.	<ul style="list-style-type: none"> • Make electronic payroll tax payments in accordance with U.S. Treasury Department or comparable guidelines provided the client has made arrangements for its financial institutions to limit such payments to a named payee. 	
Benefit plan administration	<ul style="list-style-type: none"> • Communicate summary plan data to plan trustee • Advise client management regarding the application or impact of provisions of the plan documented. • Process transactions (e.g., investment/benefit elections or increase/decrease contributions to the plan; data entry; participant confirmations; and processing of distributions and loans) initiated by plan participants through the covered licensee's or firm's electronic medium such as an interactive voice response system or Internet connection or other media. • Prepare account valuations for plan participants using data collected through the covered licensee's or firm's electronic or other media. • Prepare and transmit participant statements to plan participants based on data collected through the covered licensee's or firm's electronic or other medium. 	<ul style="list-style-type: none"> • Make policy decisions on behalf of client management. • When dealing with plan participants, interpret the plan document on behalf of management without first obtaining management's concurrence. • Make disbursements on behalf of the plan. • Have custody of assets of a plan. • Service a plan as a fiduciary as defined by ERISA.

<i>Type of Nonattest Service</i>	<i>Independence would NOT be Impaired</i>	<i>Independence would be Impaired</i>
Investment–advisory or management	<ul style="list-style-type: none"> • Recommend the allocation of funds that a client should invest in various asset classes, depending upon the client’s desired rate of return, risk tolerance, etc., • Perform recordkeeping and reporting of client’s portfolio balances including providing a comparative analysis of the client’s investments to third-party benchmarks. • Review the manner in which a client’s portfolio is being managed by investment account managers, including determining whether the managers are (1) following the guidelines of the client’s investment policy statement; (2) meeting the client’s investment objectives; and (3) conforming to the client’s stated investment styles. • Transmit a client’s investment selection to a broker-dealer or equivalent provided the client has authorized the broker-dealer or equivalent to execute the transaction. 	<ul style="list-style-type: none"> • Make investment decisions on behalf of client management or otherwise have discretionary authority over a client’s investments. • Execute a transaction to buy or sell a client’s investment. • Have custody of client assets, such as taking temporary possession of securities purchased by a client.
Corporate finance–consulting or advisory	<ul style="list-style-type: none"> • Assist in developing corporate strategies. • Assist in identifying or introducing the client to possible sources of capital that meet the client’s specifications or criteria. 	<ul style="list-style-type: none"> • Commit the client to the terms of a transaction or consummate a transaction on behalf of the client. • Act as a promoter, underwriter, broker-dealer, or guarantor of client securities, or distributor of private placement memoranda or offering documents.

<i>Type of Nonattest Service</i>	<i>Independence would NOT be Impaired</i>	<i>Independence would be Impaired</i>
Corporate finance– consulting or advisory, cont.	<ul style="list-style-type: none"> • Assist in analyzing the effects of proposed transactions including providing advice to a client during negotiations with potential buyers, sellers, or capital sources. • Assist in drafting an offering document or memorandum. • Participate in transaction negotiations in an advisory capacity. • Be named as a financial adviser in a client’s private placement memoranda or offering documents. 	<ul style="list-style-type: none"> • Maintain custody of client securities. •
Executive or employee search	<ul style="list-style-type: none"> • Recommend a position description or candidate specifications. • Solicit and perform screen of candidate and recommend qualified candidates to a client based on the client-approved criteria (e.g., required skills and experience). • Participate in employee hiring or compensation discussions in an advisory capacity. 	<ul style="list-style-type: none"> • Commit the client to employee compensation or benefit arrangements • Hire or terminate client employees.
Business risk consulting	<ul style="list-style-type: none"> • Provide assistance in assessing the client’s business risks and control processes. • Recommend a plan for making improvements to a client’s control processes and assist in implementing these improvements. 	<ul style="list-style-type: none"> • Make or approve business risk decisions. • Present business risk considerations to the Board or others on behalf of management.

<i>Type of Nonattest Service</i>	<i>Independence would NOT be Impaired</i>	<i>Independence would be Impaired</i>
Information systems—design, installation or integration ^{7 8}	<ul style="list-style-type: none"> • Install or integrate a client's financial information system that was not designed or developed by the covered licensee (e. g. an off-the-shelf accounting package) • Design, develop, install or integrate a client's information system that is unrelated to the client's financial statements or accounting records. • Assist in setting up the client's chart of accounts and financial information system that is unrelated to the client's financial statements or accounting records. • Provide training and instruction to client employees on an information and control system. 	<ul style="list-style-type: none"> • Design or develop a client's financial information system. • Make other than insignificant modifications to source code underlying a client's existing financial information system. • Supervise client personnel in the daily operation of a client's information system. • Operate a client's local area network (LAN) system.

Appraisal, Valuation, and Actuarial Services

(1) Independence would be impaired if a covered licensee performs an appraisal, valuation, or actuarial service for an attest client where the results of the service, individually or in the aggregate, would be material to the financial statements and the appraisal, valuation, or actuarial service involves a significant degree of subjectivity.

(2) Valuations performed in connection with, for example, employee stock ownership plans, business combinations, or appraisals of assets or liabilities generally involve a significant degree of subjectivity. Accordingly, if these services produce results that are material to the financial statements, independence would be impaired.

(3) An actuarial valuation of a client's pension or post employment benefit liabilities generally produces reasonably consistent results because the valuation does not require a significant degree of subjectivity.

Therefore, such services would not impair independence. In addition, appraisal, valuation, and actuarial services performed for nonfinancial statement purposes would not

⁷ Although this type of transaction may be considered by some to be similar to signing checks or disbursing funds, making electronic payroll tax payments under the specified criteria would not impair a covered licensee's or firm's independence.

⁸ When auditing plans subject to the Employee Retirement Income Security Act (ERISA), Department of Labor (DOL) regulations, which may be more restrictive, must be followed.

impair independence.⁹ However, in performing such services, all other requirements of this section should be met, including that all significant assumptions and matters of judgment are determined or approved by the client and the client is in a position to have an informed judgment on, and accepts responsibility for, the results of the service.

Internal Audit Assistance Services

(1) Internal audit services involve assisting the client in the performance of its internal audit activities, sometimes referred to as “internal audit outsourcing.” In evaluating whether independence would be impaired with respect to an attest client, the nature of the service needs to be considered.

(2) Assisting the client in performing financial and operational¹⁰ internal audit activities would impair independence unless the covered licensee takes appropriate steps to ensure that the client understands its responsibility for establishing and maintaining the internal control system¹¹ and directing the internal audit function, including the management thereof. Accordingly, any outsourcing of the internal audit function to the covered licensee whereby the covered licensee in effect manages the internal audit activities of the client would impair independence.

(3) In addition, to the general requirements of this interpretation, the covered licensee should ensure the client management:

-Designates a competent¹² individual or individuals, preferable within senior management, to be responsible for the internal audit functions;

⁹ Examples of such services may include appraisal, valuation, and actuarial services performed for the tax planning or tax compliance, estate and gift taxation, and divorce proceedings.

¹⁰ For example, a covered licensee may assess whether performance is in compliance with management's policies and procedures, to identify opportunities for improvement, and to develop recommendations for improvement or further action for management consideration and decision making.

¹¹ As part of its responsibility to establish and maintain internal control, management monitors internal control to assess the quality of its performance over time. Monitoring can be accomplished through ongoing activities, separate evaluations, or a combination of both. Ongoing monitoring activities are the procedures designed to assess the quality of internal control performance over time and built into the normal recurring activities of an entity; they include regular management and supervisory activities, comparisons, reconciliations, and other routine actions. A licensee's independence would not be impaired by the performance of separate evaluations of the effectiveness of a client's internal control, including separate evaluations of the client's ongoing monitoring activities. [Footnote added effective December 31, 2003, by the Professional Ethics Executive Committee.]

¹² A competent individual would have an understanding of internal audit activities sufficient to oversee the services performed by the covered licensee responsibilities in connection with the engagement. Such information should provide the client's governing body a basis for developing guidelines for management and the licensee to follow in carrying out these responsibilities and monitoring how well the respective responsibilities have been met.

- Determines the scope risk and frequency of internal audit activities, including those to be performed by the covered licensee providing internal audit assistance services;
- Evaluates the findings and results arising from the internal audit activities, including those performed by the covered licensee providing internal audit assistance services; and,
- Evaluates the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures by, among other things, obtaining reports from the licensee.

(4) The covered licensee should also be satisfied that the client's board of directors, audit committee, or other governing body is informed about the covered licensee's or firm's and management's respective roles and,

(5) The covered licensee is responsible for performing the internal audit procedures in accordance with the terms of the engagement and reporting thereon. The performance of such procedures should be directed, reviewed, and supervised by the covered licensee. The report should include information that allows the individual responsible for the internal audit function to evaluate the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures. This report may include recommendations for improvements in systems, processes, and procedures. The covered licensee may assist the individual responsible for the internal audit function in performing preliminary audit risk assessments, preparing audit plans, and recommending audit priorities. However, the covered licensee should not undertake any responsibilities that are required, as described above, to be performed by the individual responsible for the internal audit function.

(6) The following are examples of activities (in addition to those listed in the “**General Activities**” section of this interpretation) that, if performed as part of an internal audit assistance engagement, would impair independence:

(a) Performing ongoing monitoring activities or control activities (for example, reviewing loan originations as part of the client's approval process or reviewing customer credit information as part of the customer's sales authorization process) that affect the execution of transactions or ensure that transactions are properly executed, accounted for, or both, and performing routine activities in connection with the client's operating or production processes that are equivalent to those of an ongoing compliance or quality control function

(b) Determining which, if any, recommendations for improving the internal control should be implemented

(c) Reporting to the board of directors or audit committee on behalf of management or the individual responsible for the internal audit function

(d) Approving or being responsible for the overall internal audit work plan including the determination of the internal audit risk and scope, project priorities, and frequency of performance of audit procedures

(e) Being connected with the client as an employee or in any capacity equivalent to a licensee of client management (for example, being listed as an employee in client directories or other client publications, permitting himself or herself to be referred to by title or description as supervising or being in charge of the client's internal audit function, or using the client's letterhead or internal correspondence forms in communications). The foregoing list is not intended to be all-inclusive.

(7) Services involving an extension of the procedures that are generally of the type considered to be extensions of the covered licensee's or firm's audit scope applied in the audit of the client's financial statements, such as confirming of accounts receivable and analyzing fluctuations in account balances, are not considered internal audit assistance services and would not impair independence even if the extent of such testing exceeds that required by generally accepted auditing standards. In addition, engagements performed under the attestation standards would not be considered internal audit assistance services and therefore would not impair independence.

Transition

Independence would not be impaired as a result of the more restrictive requirements of this Section, provided the provision of any such nonattest services are pursuant arrangements in existence on December 31, 2004, and are completed December 31, 2005, and the covered licensee was in compliance with the preexisting requirements of Rule 61H1-21.001.

Section 101-4. Honorary Directorships and Trusteeships of Not-for-profit Organization

Partners or professional employees of a firm (individual) may be asked to lend the prestige of their names to not-for-profit organizations that limit their activities to those of a charitable, religious, civic, or similar nature by being named as a director or a trustee. An individual who permits his or her name to be used in this manner would not be considered to impair independence under rule 61H1-21.001, provided his or her position is clearly honorary, and he or she cannot vote or otherwise participate in board or management functions. If the individual is named in letterheads and externally circulated materials, he or she must be identified as an honorary director or honorary trustee.

Section 101-5. Permitted Loans

This section describes the conditions a covered licensee (or his or her **immediate family**) must meet in order to have any loan to or from the client, any officer or director of the client, or any individual owning ten percent or more of the client's outstanding equity securities or other ownership interests. Acceptable loans are termed "**Grandfathered Loans**" or "**Other Permitted Loans**."

Grandfathered Loans

Unsecured loans that are not material to the covered licensee's net worth, home mortgages¹³, and other secured loans¹⁴ are grandfathered if:

¹³ The value of the collateral securing a home mortgage or other secured loan should equal or exceed the remaining balance of the grandfathered loan during the term of the loan. If the value of the collateral is less than the remaining balance of the grandfathered loan, the portion of the loan that exceeds the value of the collateral must not be material to the covered licensee's net worth.

¹⁴ See Footnote 4.

(1) they were obtained from a **financial institution** under that institution's **normal lending procedures, terms, and requirements**,

(2) after becoming a covered licensee they are kept current as to all terms at all times and those terms do not change in any manner not provided for in the original loan agreement,¹⁵ and

(3) they were:

(a) obtained from the financial institution prior to its becoming a client requiring independence; or

(b) obtained from a financial institution for which independence was not required and were later sold to a client for which independence is required; or

(c) were obtained prior to April 1, 2003 and met the requirements of previous provisions of Rule 61H1-21.001; or

(d) obtained after April 1, 2003 from a financial institution client requiring independence by a borrower prior to his or her becoming a covered licensee with respect to that client.

In determining when a loan was obtained, the date a loan commitment or line of credit is granted must be used, rather than the date a transaction closes or funds are obtained. For purposes of applying the grandfathered loans provision when the covered licensee is a partner in a partnership: a loan to a limited partnership (or similar type of entity) or a general partnership would be ascribed to each covered licensee who is a partner in the partnership on the basis of their legal liability as a limited or general partner if: the covered licensee's interest in the limited partnership, either individually or combined with the interest of one or more covered licensees, exceeds 50 percent of the total limited partnership interest; or the covered licensee, either individually or together with one or more covered licensees, can control the general partnership. Even if no amount of a partnership loan is ascribed to the covered licensee(s) identified above, independence is considered to be impaired if the partnership renegotiates the loan or enters into a new loan that is not one of the permitted loans described below.

Other Permitted Loans

This provision permits only the following new loans to be obtained from a financial institution client for which independence is required. These loans must be obtained under the institution's normal lending procedures, terms, and requirements and must, at all times, be kept current as to all terms.

(1) Automobile loans and leases collateralized by the automobile.

(2) Loans fully collateralized by the cash surrender value of an insurance policy.

(3) Loans fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").

(4) Credit cards and cash advances where the aggregate outstanding balance on the current statement is reduced to \$10,000 or less by the payment due date.

¹⁵ Changes in the terms of the loan include, but are not limited to, a new or extended maturity date, a new interest rate or formula, revised collateral, or revised or waived covenants.

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission.

Section 101-6. The Effect of Actual or Threatened Litigation on Independence

In some circumstances, independence may be considered to be impaired as a result of litigation or the expressed intention to commence litigation as discussed below.

Litigation Between Client and Licensee

The relationship between the management of the client and a covered licensee must be characterized by complete candor and full disclosure regarding all aspects of the client's business operations. In addition, there must be an absence of bias on the part of the covered licensee so that he or she can exercise professional judgment on the financial reporting decisions made by the management. When the present management of a client company commences, or expresses an intention to commence, legal action against a covered licensee, the covered licensee and the client's management may be placed in adversarial positions in which the management's willingness to make complete disclosures and the covered licensee's objectivity may be affected by self-interest.

For the reasons outlined above, independence may be impaired whenever the covered licensee and the covered licensee's client or its management are in threatened or actual positions of material adverse interests by reason of threatened or actual litigation.

Because of the complexity and diversity of the situations of adverse interests which may arise, however, it is difficult to prescribe precise points at which independence may be impaired. The following criteria are offered as guidelines:

1. The commencement of litigation by the present management alleging deficiencies in audit work for the client would be considered to impair independence.
2. The commencement of litigation by the covered licensee against the present management alleging management fraud or deceit would be considered to impair independence.
3. An expressed intention by the present management to commence litigation against the covered licensee alleging deficiencies in audit work for the client would be considered to impair independence if the covered licensee concludes that it is probable that such a claim will be filed.
4. Litigation not related to performance of an attest engagement for the client (whether threatened or actual) for an amount not material to the covered licensee's firm¹⁶ or to the client company¹⁷ would not generally be considered to affect the relationship in such a way as to impair independence. Such claims may arise, for example, out of disputes as to billings for services, results of tax or management services advice or similar matters.

¹⁶ Because of the complexities of litigation and the circumstances under which it may arise, it is not possible to prescribe meaningful criteria for measuring materiality; accordingly, the covered licensee should consider the nature of the controversy underlying the litigation and all other relevant factors in reaching a judgment.

¹⁷ See Footnote 7.

Litigation By Security Holders

A covered licensee may also become involved in litigation ("primary litigation") in which the covered licensee and the client or its management are defendants. Such litigation may arise, for example, when one or more stockholders bring a stockholders' derivative action or a so-called "class action" against the client or its management, its officers, directors, underwriters and covered licensees under the securities laws. Such primary litigation in itself would not alter fundamental relationships between the client or its management and the covered licensee and therefore would not be deemed to have an adverse impact on independence. These situations should be examined carefully, however, since the potential for adverse interests may exist if cross-claims are filed against the covered licensee alleging that the covered licensee is responsible for any deficiencies or if the covered licensee alleges fraud or deceit by the present management as a defense. In assessing the extent to which independence may be impaired under these conditions, the covered licensee should consider the following additional guidelines:

1. The existence of cross-claims filed by the client, its management, or any of its directors to protect a right to legal redress in the event of a future adverse decision in the primary litigation (or, in lieu of cross-claims, agreements to extend the statute of limitations) would not normally affect the relationship between client management and the covered licensee in such a way as to impair independence, unless there exists a significant risk that the cross-claim will result in a settlement or judgment in an amount material to the covered licensee's firm¹⁸ or to the client.
2. The assertion of cross-claims against the covered licensee by underwriters would not generally impair independence if no such claims are asserted by the client or the present management.
3. If any of the persons who file cross-claims against the covered licensee are also officers or directors of other clients of the covered licensee, independence with respect to such other clients would not generally be considered to be impaired.

Other Third-Party Litigation

Another type of third-party litigation against the covered licensee may be commenced by a lending institution, other creditor, security holder, or insurance company who alleges reliance on financial statements of the client with which the covered licensee is associated as a basis for extending credit or insurance coverage to the client. In some instances, an insurance company may commence litigation (under subrogation rights) against the covered licensee in the name of the client to recover losses reimbursed to the client. These types of litigation would not normally affect independence with respect to a client who is either not the plaintiff or is only the nominal plaintiff, since the relationship between the covered licensee and client management would not be affected. They should be examined carefully, however, since the potential for adverse interests may exist if the covered licensee alleges, in his defense, fraud, or deceit by the present management.

¹⁸ See Footnote 7.

If the real party in interest in the litigation (e.g., the insurance company) is also a client of the covered licensee ("the plaintiff client"), independence with respect to the plaintiff client may be impaired if the litigation involves a significant risk of a settlement or judgment in an amount which would be material to the covered licensee's firm¹⁹ or to the plaintiff client.

Effects of Impairment of Independence

If the covered licensee believes that the circumstances would lead a reasonable person having knowledge of the facts to conclude that the actual or intended litigation poses an unacceptable threat to independence, the covered licensee shall either (a) disengage himself or herself, or (b) disclaim an opinion because of lack of independence.

Such disengagement may take the form of resignation or cessation of any attest engagement then in progress pending resolution of the issue between the parties.

Termination of Impairment

The conditions giving rise to a lack of independence are generally eliminated when a final resolution is reached and the matters at issue no longer affect the relationship between the covered licensee and client. The covered licensee should carefully review the conditions of such resolution to determine that all impairments to the covered licensee's objectivity have been removed.

Section 101-7. RESERVED

Section 101-8. Effect on Independence of Financial Interests in Nonclients Having Investor or Investee

Relationships with a Covered Licensee's Client

Introduction

Financial interests in nonclients that are related in various ways to a client may impair independence. Situations in which the nonclient investor is a partnership are covered in other rulings [See Appendix 3].

The following definitions are to be used in only in Section 101-8 (all other definitions are contained at the end of the Standards).

The following specifically identified terms are used in Section 101-8 as indicated:

1. Client. The term client means the person or entity with whose financial statements a covered licensee is associated.
2. Investor. The term investor means (a) a parent, (b) a general partner, or (c) a natural person or corporation that has the ability to exercise significant influence.
3. Investee. The term investee means (a) a subsidiary or (b) an entity over which an investor has the ability to exercise significant influence.

¹⁹ See Footnote 7.

Interpretation

Where a nonclient **investee** is material to a client **investor**, any direct or material indirect financial interest of a covered licensee in the nonclient investee would be considered to impair independence with respect to the client investor. If the nonclient investee is immaterial to the client investor, a covered licensee's material investment in the nonclient investee would cause an impairment of independence.

Where a client investee is material to nonclient investor, any direct or material indirect financial interest of a covered licensee in the nonclient investor would be considered to impair independence with respect to the client investee. If the client investee is immaterial to the nonclient investor, and if a covered licensee's financial interest in the nonclient investor allows the covered licensee to exercise significant influence over the actions of the nonclient investor, independence would be considered to be impaired.

Other relationships, such as those involving brother-sister common control or client-nonclient joint ventures, may affect the appearance of independence. The covered licensee should make a reasonable inquiry to determine whether such relationships exist, and if they do, careful consideration should be given to whether the financial interests in question would lead a reasonable observer to conclude that the specified relationships pose an unacceptable threat to independence.

In general, in brother-sister common control situations, an immaterial financial interest of a covered licensee in the nonclient investee would not impair independence with respect to the client investee, provided the covered licensee could not exercise significant influence over the nonclient investor. However, if a covered licensee's financial interest in a nonclient investee is material, the covered licensee could be influenced by the nonclient investor, thereby impairing independence with respect to the client investee. In like manner, in a joint venture situation, an immaterial financial interest of a covered licensee in the nonclient investor would not impair the independence of the covered licensee with respect to the client investor, provided that the covered licensee could not exercise significant influence over the nonclient investor.

If a covered licensee does not and could not reasonably be expected to have knowledge of the financial interests or relationship described in this Section, independence would not be considered to be impaired under this Section.

Section 101-9. RESERVED

Section 101-10. The Effect on Independence of Relationships with Entities Included in the Governmental Financial Statements²⁰

²⁰ Except for a financial reporting entity's general purpose financial statements, which is defined within the text of this interpretation, certain terminology used throughout the interpretation is specifically defined by the Governmental Accounting Standards Board.

For purposes of this Section, a financial reporting entity's basic financial statements, issued in conformity with generally accepted accounting principles in the United States of America, include the government-wide financial statements (consisting of the entity's governmental activities, business-type activities, and discretely presented component units), the fund financial statements (consisting of major funds, nonmajor governmental and enterprise funds, internal service funds, blended component units, and fiduciary funds) and other entities disclosed in the notes to the basic financial statements. Entities that should be disclosed in the notes to the basic financial statements include, but are not limited to, related organizations, joint ventures, jointly governed organizations, and component units of another government with characteristics of a joint venture or jointly governed organization.

Auditor of Financial Reporting Entity

A covered licensee issuing a report on the basic financial statements of the financial reporting entity must be independent of the financial reporting entity, as defined in the preceding paragraph of this Section. However, independence is not required with respect to any major or nonmajor fund, internal service fund, fiduciary fund, or component unit or other entities disclosed in the financial statements, where the primary auditor explicitly states reliance on other auditors reports thereon. In addition, independence is not required with respect to an entity disclosed in the notes to the basic financial statements, if the financial reporting entity is not financially accountable for the organization and the required disclosure does not include financial information. For example, a disclosure limited to the financial reporting entity's ability to appoint the governing board members would not require a licensee to be independent of that organization.

However, the covered licensee and his or her immediate family shall not hold a key position with a major fund, nonmajor fund, internal service fund, fiduciary fund, or component unit of the financial reporting entity or other entity that should be disclosed in the notes to the basic financial statements.

Auditor of a Major Fund, Nonmajor Fund, Internal Service Fund, Fiduciary Fund, or Component Unit of the Financial Reporting Entity or Other Entity that Should be Disclosed in the Notes to the Basic Financial Statements

A covered licensee who is auditing the financial statements of a major fund, nonmajor fund, internal service fund, fiduciary fund, or component unit of the financial reporting entity or an entity that should be disclosed in the notes to the basic financial statements of the financial reporting entity, but is not auditing the primary government, must be independent with respect to those financial statements that the covered licensee is reporting upon. The covered licensee is not required to be independent of the primary government or other funds or component units of the reporting entity or entities that should be disclosed in the notes to the basic financial statements. However, the covered licensee and his or her immediate family should not hold a key position within the primary government. For purposes of this Section, a covered licensee and immediate family member would not be considered employed by the primary government if the exceptions provided for in the definition of a **client** are met.

Section 101-11. RESERVED

Section 101-12. Independence and Cooperative Arrangements with Clients

Independence will be considered to be impaired if, during the period of a professional engagement, a licensee or his or her firm had any cooperative arrangement with the client that was material to the licensee's firm or to the client.

Cooperative Arrangement

A cooperative arrangement exists when a licensee's firm and a client jointly participate in a business activity. The following are examples, which are not all inclusive, of cooperative arrangements:

1. Prime/subcontractor arrangements to provide services or products to a third party
2. Joint ventures to develop or market products or services
3. Arrangements to combine one or more services or products of the firm with one or more services or products of the client and market the package with references to both parties
4. Distribution or marketing arrangements under which the firm acts as a distributor or marketer of the client's products or services, or the client acts as the distributor or marketer of the products or services of the firm. Nevertheless, joint participation with a client in a business activity does not ordinarily constitute a cooperative arrangement when all the following conditions are present:

(a) The participation of the firm and the participation of the client are governed by separate agreements, arrangements, or understandings.

(b) The firm assumes no responsibility for the activities or results of the client, and vice versa.

(c) Neither party has the authority to act as the representative or agent of the other party. In addition, the licensee's firm should consider the requirements of section 473.319 and section 473.3205.

101-13 RESERVED.

101-14 RESERVED.

Definitions

.01 **Attest engagement.** An attest engagement is an engagement that requires independence as defined in AICPA Professional Standards.

.02 **Attest engagement team.** The attest engagement team consists of individuals participating in the attest engagement, including those who perform concurring and second partner reviews. The attest engagement team includes all employees and contractors retained by the firm who participate in the attest engagement, irrespective of their functional classification (for example, audit, tax, or management consulting services). The attest engagement team excludes specialists as discussed in SAS No. 73, *Using the Work of a*

Specialist [AU section 336], and individuals who perform only routine clerical functions, such as word processing and photocopying.

.03 Client. A client is any person or entity, other than the member's employer, that engages a member or a member's firm to perform professional services or a person or entity with respect to which professional services are performed. For purposes of this paragraph, the term "employer" does not include—

a. Entities engaged in the practice of public accounting; or

b. Federal, state, and local governments or component units thereof provided the member performing professional services with respect to those entities—

i. Is directly elected by voters of the government or component unit thereof with respect to which professional services are performed; or

ii. Is an individual who is (1) appointed by a legislative body and (2) subject to removal by a legislative body; or

iii. Is appointed by someone other than the legislative body, so long as the appointment is confirmed by the legislative body and removal is subject to oversight or approval by the legislative body.

.04 Close relative. A close relative is a parent, sibling, or nondependent child.

.05 Council. The Council of the American Institute of Certified Public Accountants.

.06 Covered member. A covered member is—

a. An individual on the attest engagement team;

b. An individual in a position to influence the attest engagement;

c. A partner or manager who provides nonattest services to the attest client beginning once he or she provides ten hours of nonattest services to the client within any fiscal year and ending on the later of the date (i) the firm signs the report on the financial statements for the fiscal year during which those services were provided or (ii) he or she no longer expects to provide ten or more hours of nonattest services to the attest client on a recurring basis;

d. A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;

e. The firm, including the firm's employee benefit plans; or

f. An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles [GAAP] for consolidation purposes) by any of the individuals or entities described in (a) through (e) or by two or more such individuals or entities if they act together.

.08 Financial institution. A financial institution is considered to be an entity that, as part of its normal business operations, makes loans or extends credit to the general public. In addition, for automobile leases addressed under interpretation 101-5, *Loans From Financial Institution Clients*, an entity would be considered a financial institution if it leases automobiles to the general public.

.09 Financial statements. A presentation of financial data, including accompanying notes, if any, intended to communicate an entity's economic resources and/or obligations at a point in time or the changes therein for a period of time, in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles.

Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on Standards for Attestation Engagements and tax returns and supporting schedules do not, for this purpose, constitute financial statements. The statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.

.10 Firm. A firm is a form of organization permitted by law or regulation whose characteristics conform to resolutions of the Council of the American Institute of Certified Public Accountants that is engaged in the practice of public accounting. Except for purposes of applying Rule 101: *Independence* (ET Section 101.01), the firm includes the individual partners thereof.

.11 Holding out. In general, any action initiated by a member that informs others of his or her status as a CPA or AICPA-accredited specialist constitutes holding out as a CPA. This would include, for example, any oral or written representation to another regarding CPA status, use of the CPA designation on business cards or letterhead, the display of a certificate evidencing a member's CPA designation, or listing as a CPA in local telephone directories.

.12 Immediate family. Immediate family is a spouse, spousal equivalent, or dependent (whether or not related).

.13 Individual in a position to influence the attest engagement. An individual in a position to influence the attest engagement is one who—

- a.* Evaluates the performance or recommends the compensation of the attest engagement partner;
- b.* Directly supervises or manages the attest engagement partner, including all successively senior levels above that individual through the firm's chief executive;
- c.* Consults with the attest engagement team regarding technical or industry-related issues specific to the attest engagement; or
- d.* Participates in or oversees, at all successively senior levels, quality control activities, including internal monitoring, with respect to the specific attest engagement.

.14 Institute. The American Institute of Certified Public Accountants.

.15 Interpretations of rules of conduct. Pronouncements issued by the division of professional ethics to provide guidelines concerning the scope and application of the rules of conduct.

.16 Joint closely held investment. A joint closely held investment is an investment in an entity or property by the member and the client (or the client's officers or directors, or any owner who has the ability to exercise significant influence over the client) that enables them to control (as defined by GAAP for consolidation purposes) the entity or property.

.17 Key position. A key position is a position in which an individual:

- a.* Has primary responsibility for significant accounting functions that support material components of the financial statements;
- b.* Has primary responsibility for the preparation of the financial statements; or
- c.* Has the ability to exercise influence over the contents of the financial statements, including when the individual is a member of the board of directors or similar governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

For purposes of attest engagements not involving a client's financial statements, a key position is one in which an individual is primarily responsible for, or able to influence, the subject matter of the attest engagement, as described above.

.18 Loan. A loan is a financial transaction, the characteristics of which generally include, but are not limited to, an agreement that provides for repayment terms and a rate of interest. A loan includes, but is not limited to, a guarantee of a loan, a letter of credit, a line of credit, or a loan commitment.

.19 Manager. A manager is a professional employee of the firm who has either of the following responsibilities:

- a.* Continuing responsibility for the overall planning and supervision of engagements for specified clients.
- b.* Authority to determine that an engagement is complete subject to final partner approval if required.

.20 Member. A member, associate member, or international associate of the American Institute of Certified Public Accountants.

.21 Normal Lending Procedures, Terms, and Requirements. "Normal lending procedures, terms, and requirements" relating to a covered member's loan from a financial institution are defined as lending procedures, terms, and requirements that are reasonably comparable with those relating to loans of a similar character committed to other borrowers during the period in which the loan to the covered member is committed. Accordingly, in making such comparison and in evaluating whether a loan was made under "normal lending procedures, terms, and requirements," the covered member should consider all the circumstances under which the loan was granted, including

1. The amount of the loan in relation to the value of the collateral pledged as security and the credit standing of the covered member.
2. Repayment terms.
3. Interest rate, including "points."

4. Closing costs.

5. General availability of such loans to the public.

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such financial institutions. Broker-dealers, for example, are subject to regulation by the Securities and Exchange Commission.

.22 Office. An office is a reasonably distinct subgroup within a firm, whether constituted by formal organization or informal practice, where personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters. Substance should govern the office classification. For example, the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location.

.23 Partner. A partner is a proprietor, shareholder, equity or non-equity partner or any individual who assumes the risks and benefits of firm ownership or who is otherwise held out by the firm to be the equivalent of any of the aforementioned.

.24 Period of the professional engagement. The period of the professional engagement begins when a member either signs an initial engagement letter or other agreement to perform attest services or begins to perform an attest engagement for a client, whichever is earlier. The period lasts for the entire duration of the professional relationship (which could cover many periods) and ends with the formal or informal notification, either by the member or the client, of the termination of the professional relationship or by the issuance of a report, whichever is later. Accordingly, the period does not end with the issuance of a report and recommence with the beginning of the following year's attest engagement.

.25 Practice of public accounting. The practice of public accounting consists of the performance for a client, by a member or a member's firm, while holding out as CPA(s), of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated by bodies designated by Council, such as Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, and Statements on Standards for Attestation Engagements.

However, a member or a member's firm, while holding out as CPA(s), is not considered to be in the practice of public accounting if the member or the member's firm does not perform, for any client, any of the professional services described in the preceding paragraph.

.26 Professional services. Professional services include all services performed by a member while holding out as a CPA.

.27 Significant influence. The term *significant influence* is as defined in Accounting Principles Board Opinion No. 18 [AC section I82] and its interpretations.

APPENDIX B

Key Terminology

American Institute of CPAs (AICPA)

The American Institute of Certified Public Accountants is a national association for the accounting industry where part of its mission is to provide accounting professionals with uniform certification and licensing standards, establishing professional standards, and enforcing current requirements.

Attest Engagement Team

(See Appendix C, Definitions, .02)

Board

Any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, see Definitions, 455.01 FS.

Board of Accountancy, see Definitions, 473.302 FS.

Certified Public Accountant

An individual who holds a license to practice public accounting in this state or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, see Definitions, 473.302 FS.

Client

(See Appendix C, Definitions, .03)

Close Relative

(See Appendix C, Definitions, .04)

Covered member

(See Appendix C, Definitions, .06)

CPA Investigator

An individual under contract with the Division of Certified Public Accountants to research complaints filed with DBPR against CPAs. The Division has approximately 15 CPA Investigators on contract.

Department

The Department of Business and Professional Regulation, see Definitions, 473.302 FS.

Division of Certified Public Accounting

A division within Florida's Department of Business and Professional Regulation (DBPR), see Definitions, 473.302 FS.

Engagement Team

All owners, employees, and contractors who participate on or influence the engagement.

Ethics

The discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values; a theory or system of moral values; the principles of conduct governing an individual or a group; a guiding philosophy.

Ethics Resource Center (ERC)

Non profit organization devoted to the advancement of high ethical standards and practices in public and private institutions. The expertise of ERC also confirms and informs the public dialogue on ethics and ethical behavior. The researchers at ERC analyze current issues, emerging issues, and produce new ideas and benchmarks for the public trust.

Equity Owner

Any partner, shareholder, proprietor, or other equity owner of the firm.

Equity owners of the primary equity owner's office

Owners who work in the same office as the primary equity owner.

Financial Accounting Standards Board (FASB)

The responsibility of the Financial Accounting Standards Board (FASB) is the development and promulgation of accounting standards that are used by both public and private companies to prepare financial statements. FASB is an independent, private sector US organization. FASB standards are recognized as authoritative by the Securities and Exchange Commission and are relied on by investors, creditors, auditors and others for credible, transparent and comparable financial information. The FASB works closely with the PCAOB to identify new areas for standards and to move accounting and financial reporting guidance that is presently provided in the auditing literature to the accounting literature.

Financial Statements

Presentation of financial data including balance sheets, income statements and statements of cash flow, or any supporting statement that is intended to communicate an entity's financial position at a point in time and its results of operations for a period then ended.

Firm

Any entity allowed by the AICPA or permitted by law or regulation which is in public accounting; any entity that is engaged in the practice of public accounting. (Also see Appendix C, Definitions, .10)

Any legal entity that is engaged in the practice of public accounting, see Definitions, 473.302 FS.

Florida Board of Accountancy

Consists of nine members - seven CPAs and two consumers appointed by the Governor. The Board meets approximately ten times a year at various locations throughout the state. Meetings are open to the public.

Florida Institute of Certified Public Accountants (FICPA)

The FICPA, headquartered in Tallahassee, is a member-driven society representing the interests of Certified Public Accountants throughout Florida. The Institute has been working to advance the accounting profession in Florida for more than 100 years and with approximately 18,000 members.

Fraud

Willful misrepresentation by one person of a fact inflicting damage on another person.

Generally Accepted Accounting Principles (GAAP)

Conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. The highest level of such principles is set by the Financial Accounting Standards Board (FASB).

Generally Accepted Accounting Standards (GAAS)

Standards set by the AICPA which concern the auditor's professional qualities and judgment in the performance of his/her audit and in the actual report.

Holding Out

(See Appendix C, Definitions, .11)

Home office

The principal headquarters of an entity. An entity may have only one principal headquarters, see Definitions, 473.302 FS.

Immediate Family

(See Appendix C, Definitions, .12)

Individual in a position to influence the attest engagement

(See Appendix C, Definitions, .13)

Internal Control

Process designed to provide reasonable assurance regarding achievement of various management objectives such as the reliability of financial reports.

IAASB

International Auditing and Attestation Standards Board

IESBA

International Ethics Standards Board for Accountants

IFAC

International Federation of Accountants; source for the **Code of Ethics for Professional Accountants**.

IFRS

International Financial Reporting Standards

Key Position

(See Appendix C, Definitions, .17)

Licensed Audit Firm

Or "public accounting firm" means a firm licensed under s. [473.3101](#), see Definitions, 473.302 FS.

Manager

(See Appendix C, Definitions, .19)

Materiality

Magnitude of an omission or misstatements of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would change or be influenced.

Member in Business

A member employed or engaged on a contractual or volunteer basis in an executive, a staff, a governance, an advisory, or an administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, or regulatory or professional bodies. This does not include a member while engaged in the practice of public accounting. ET section 92.22

National Association of State Boards of Accountancy (NASBA)

A forum for the nation's state boards of accountancy, which administer the Uniform CPA Examination, license certified public accountants, and regulate the practice of public accountancy in the U.S.

Nonattest equity owner or manager

Any equity owner or manager providing ten (10) or more hours of non attest services to the client in any fiscal year of the attest engagement.

Objectivity

Emphasizing or expressing the nature of reality as it is apart from personal reflection or feelings; independence of mind.

Office

(See Appendix C, Definitions, .22)

Partner

(See Appendix C, Definitions, .23)

Practice of Public Accounting

(See Appendix C, Definitions, .25)

Practice of, " "practicing public accountancy," or "public accounting", see Definitions, 473.302 FS.

Probable Cause Panel

Established by DBPR. Reviews all complaints filed to determine if probable cause or not, or need for further investigation. Reviews investigative reports to determine if probable cause or not.

Professional Services

(See Appendix C, Definitions, .26)

Professionals

CPAs or anyone seeking that status

Public Company Accounting Oversight Board (PCAOB)

A private sector, non-profit corporation, created by the Sarbanes-Oxley Act of 2002, to oversee the auditors of public companies in order to protect the interest of investors and further the public interest in the preparation of informative, fair, and independent audit reports. The PCAOB sets auditing standards for SEC companies. The PCAOB sets auditing standards for SEC companies. The PCAOB works closely with FASB in review of auditing standards and emerging issues research.

Review

Accounting service that provides some assurance as to the reliability of financial information. In a review, a CPA does not conduct an examination under GAAS.

Risk Management

Process of identifying and monitoring business risks in a manner that offers a risk/return relationship that is acceptable to an entity's operating philosophy.

Securities and Exchange Commission (SEC)

The primary federal regulatory agency for the securities industry, whose responsibility is to promote full disclosure and to protect investors against fraudulent and manipulative practices in the securities markets.

Significant Influence

(See Appendix C, Definitions, .27)

Situation Ethics

A system of ethics by which acts are judged within their contexts instead of by categorical principles.

Uniform Accountancy Act

The Uniform Accountancy Act, Fourth Edition, dated December 2007 and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy, see Definitions, 473.302 FS.

Working Papers

Records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the course of the audit. Also, any records developed by a CPA during an audit.

APPENDIX C

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Terminology, key Appendix D

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**(MEMBER'S NAME), CPA, Completes course
on (SUBJECT AREA)**

(MEMBER'S CITY), (DATE), 2013 -- (MEMBER'S FULL NAME),
CPA, of (FIRM NAME) in (CITY), completed a course,
“(COURSE TITLE),” on (DATE). This continuing-education course covered
the topic of (SUBJECT AREA).

(MEMBER'S LAST NAME) is a (POSITION TITLE) practicing in the
area of (MEMBER'S AREA OF PRACTICE – TAX, AUDIT, ETC.) with the firm.

In addition to (MEMBER'S LAST NAME)'S professional responsibilities, HE/SHE is also active in (LIST
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an active member of the Florida Institute of Certified Public Accountants, the professional association
representing the interests of more than 18,400 CPAs with over 4,400 offices throughout Florida.

(MEMBER NAME) can be reached by telephone at (PHONE NUMBER), or via e-mail at
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