

ETHICS FOR TODAY'S TAX PROFESSIONAL

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Disclaimer

These slides are for educational purposes only and are not intended, and should not be relied upon, as tax or accounting advice.

What is Ethics?

- Some definitions
 - A set of moral principles; a theory or system of moral values
 - The principles of conduct governing an individual or a group
 - A principle of right or good behavior or system of moral principles or values; the rules or standards of conduct governing the members of a profession

Purpose and Function of Ethics Codes

- Reflect organizational values
- Articulate principles and standards
- Advise members of accepted conduct - and conduct that is not acceptable
 - Behavior may be branded as unethical even though it is not unlawful
- Aspiration to members and, through enforcement measures, protects integrity of the organization
- Assist members in identifying ethical issues and provide framework for resolution

Issues for Certified Public Accountants

- The handling of tax returns
- Reporting false information
- Withholding tax information
- Unwarranted protests or appeals
- Qualifications
- Hiring practices

Issues for Attorneys

- Conflicts of interest
- Revealing confidential information
- Unwarranted appeals
- False or misleading advertising
- Fee issues:
 - Fees Must Be Reasonable

Ethics Standards - ABA

- Standards of the American Bar Association
 - Model Rules of Professional Conduct
 - Section of Taxation -
 - Lawyers may advise their clients in reporting a position and/or filing methodology on a return favorable to the client as long as they believe, in good faith, that the position is warranted within existing law or can be supported in a good faith argument against existing law.
 - “Good faith” is defined as believing there is at least a 33% possibility of success if the matter is litigated.
 - A lawyer has a duty not to mislead the IRS deliberately by misstatements or silence or permit a client to mislead the IRS.

Select ABA Model Rules Provisions

- Rule 1.1: COMPETENCE
- RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER
- RULE 1.4: COMMUNICATION
- RULE 1.6: CONFIDENTIALITY OF INFORMATION
- RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

Ethics Standards - AICPA

- **Professional Standards for Ethics**
 - American Institute of Certified Public Accountants (AICPA)
 - Statement on Standards for Tax Services (SSTS or “Standards”)
 - SSTS and interpretations issued thereunder reflect the AICPA’s standards of tax practice and delineate members’ responsibilities to taxpayers, the public, the government, and the profession
 - Ongoing process to articulate standards
 - Promulgated by the Tax Executive Committee

Select Ethics Standards - AICPA

- Statement on Standards for Tax Services (SSTS)
 - No. 1: Return Positions – Realistic Possibility Standard
 - No. 2: Answers to Questions on Returns
 - No. 3: Certain Procedural Aspects of Preparing Returns
 - No. 4: Use of Estimates
 - No. 5: Departure from a Position Previously Concluded in an Administrative Hearing or Court Decision
 - No. 6: Knowledge of Error, Return Preparation and Administrative Proceedings
 - No. 7: Form and Content of Advice to Taxpayers

Circular 230

- Publication of certain U.S. Treasury regulations which include the rules governing practice before the IRS.
- Rules require certain standards from attorneys, CPAs, Enrolled Agents, and other persons who prepare tax returns and provide tax advice.
- The rules in Circular 230 also prohibit certain conduct.
- Penalties may be imposed for noncompliance.
- The rules in Circular 230 are codified as Title 31 of the Code of Federal Regulations, Subtitle A, Part 10 (31 C.F.R. Part 10).

Time for The Game!

- It would be unethical to violate copyright laws and play the Jeopardy! theme song, or use their font.
- It is not unethical (or illegal) to ask questions in a variety of categories and difficulty levels.
- It is also not unethical for a mom to brag, using officially sanctioned publicity photos:



Jeopardy! @Jeopardy · Jan 19
The perfect pair of earrings doesn't exi---

Erin Portman plays TONIGHT on an all-new #Jeopardy!



19 35 601 53.2K

Communication	Conflicts	Confidentiality	Fees	Misconduct	Potpourri
<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>	<u>200</u>
<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>	<u>300</u>
<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>	<u>400</u>

COMMUNICATION

COMMUNICATION - 100

- You are in settlement negotiations with the DOR over proposed tax assessment against your client.
- Your client has authorized you to settle the case for up to 50% of the proposed assessment in order to avoid litigation.
- Is it ethical for you, as the taxpayer's attorney, to represent to the DOR that your settlement authority is no more than 25% of the disputed assessment?

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Possible Answers

- A. No, unless you believe that there is a reasonable chance to settle at that amount.
- B. No, unless you first explain the probability of the Department accepting that settlement percentage.
- C. Yes, because it is just a negotiation and you are a negotiator.
- D. Yes, because lawyers are ethically permitted to always stretch the truth a bit if it helps their client.

COMMUNICATION – 100

ANSWER

ANSWER: C

Yes, because it is just a negotiation and you are a negotiator.

- **Comment on ABA Model Rule 4.1**

- ABA Model Rule 4.1 refers to misrepresentations regarding statements of fact.
- Whether a particular statement should be regarded as one of fact can depend on the circumstances.
- Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact.
- Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category.

COMMUNICATION - 200

- You are an attorney arguing a tax case before an ALJ in Illinois.
- The morning of your argument, you receive notice of a decision from the Illinois Appellate Court that is directly contrary to one of the positions you intend to argue later in the day.

True or False?

You have an obligation to advise the ALJ of the contrary decision.

COMMUNICATION – 200

ANSWER

True

- ABA Model Rule 3.3 provides in part that a lawyer shall not knowingly:
 - make a false statement of fact or law to a tribunal, or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or
 - fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

COMMUNICATION - 300

- A CPA and his non-lawyer consultant friend enter into a non-exclusive referral agreement. Under the terms of the agreement, the referring party has no responsibility to perform any of the work for the services provided but receives a fee of 25% of the total collected from the client.
- Is this arrangement ethical?

Possible Answers

- A. Yes, since the referral arrangement permits the consultants to provide additional professional services for their clients.
- B. Yes, if the client was informed of the arrangement prior to the referral being made.
- C. No, this arrangement would only be acceptable if the referring CPA did not receive a fee.
- D. No, because the referring CPA has to perform some services.

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COMMUNICATION – 300

ANSWER

ANSWER: B

Yes, but only if the client was informed of the arrangement prior to the referral being made.

- AICPA Rule 503(C) states that any member who accepts a referral for recommending or referring any service of a CPA to any person or entity who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

COMMUNICATION – 400

- In completing your profile on Linked In, you identify your fields of practice to include various aspects of State and Local Tax, including a specialization in Unclaimed Property law.
- Does your profile violate an ABA ethics rule?

COMMUNICATION – 400

ANSWER

Yes!

ABA Rule 7.4: Communication of Fields of Practice and Specialization

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:
 - (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and
 - (2) the name of the certifying organization is clearly identified in the communication.

CONFLICTS

CONFLICTS – 100

- Conflicts of interest arise when there is a real or perceived incompatibility between private interests and public duties.
- You are in-house counsel for ABC Corp. and in the middle of a large, multiple cycle income tax audit.
- Is it ethical for you to use bargaining techniques to help you position the company in audit negotiations, as long as you do not misrepresent any material facts or law?

CONFLICTS – 100

ANSWER

Yes!

ABA Model Rule 4.1: *Truthfulness In Statements To Others*

- In the course of representing a client a lawyer shall not knowingly:
 - (a) make a false statement of material fact or law to a third person; or
 - (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

CONFLICTS - 200

- You are an Illinois CPA and you prepare Illinois State returns for ABC Corp.
- The DOR has undertaken an audit of ABC.
- During the audit, you learn there was an error in the returns during the first year of the audit cycle, but the DOR has failed to discover it.
- Correcting the error would create additional tax liability for ABC Corp.

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True or False?

You must inform the auditor about the errors you discovered before the audit is completed.

CONFLICTS – 200

ANSWER

FALSE

You should not inform the auditor about the errors you discovered until receiving permission from your client.

- **Note:** you do have an obligation to inform your client of the error and of the potential consequences.
- AICPA SSTS No. 6, *Knowledge of Error: Return Preparation and Administrative Proceedings*, paragraph 4 provides that a CPA
 - should inform the taxpayer promptly upon becoming aware of an error in a return that is the subject of an administrative proceeding.
 - should advise the taxpayer of the potential consequences of the error and recommend the corrective measures to be taken.
 - “The [CPA] is not allowed to inform the taxing authority without the taxpayer’ permission, except when required by law.”

CONFLICTS – 300

- ABC Corp. filed a protest with the Illinois Tribunal on its own before retaining you as its counsel.
- During your preparation for a status hearing, you discover that ABC made a material misrepresentation of fact in its protest, which will likely have an effect on the decision. Which of the following should you do?
 - a. Move to withdraw immediately, without disclosure.
 - b. Advise your client of the impropriety and instruct them to notify the ALJ of the misrepresentation.
 - c. Move to amend the false protest and proceed as if it was never submitted.
 - d. None of the above.

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CONFLICTS – 300

ANSWER

ANSWER: D

- Rule 3.3: *Candor Toward the Tribunal*
 - (a)(3) prohibits a lawyer from offering material evidence known by the lawyer to be false, even if the information was placed before the tribunal by the client prior to the lawyer's representation of the client.
 - If a lawyer comes to know a client has offered false material evidence to a tribunal, the lawyer must take “**reasonable remedial measures**, including, if necessary, disclosure to the tribunal.” Your **primary obligation** is to make sure that no known false information is presented to the Tribunal. This obligation exceeds your obligations to your client.

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CONFLICTS – 300

ANSWER (cont'd.)

“Reasonable, remedial measures...”

- Comment [10]:
 - advise the client of the lawyer’s duty of candor to the tribunal and seek the client’s cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action...
 - the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done.

CONFLICTS – 400

- Your client ABC Corp is under audit by Illinois Department of Revenue (“Department”) and the auditor makes a determination that there’s been a mischaracterization of business income on a sale of a business and the Department issues a tax assessment of \$1 million.
- Client tells you that Department looked at this same issue in the last audit cycle and Department took a different position resulting in no assessment. You need to file a protest in Circuit Court.
- After filing the protest, you explain it to the Department lawyer. Department lawyer says they need to conduct discovery first.
- Client tells you no discovery, you need to contact the Director of Revenue or Income Tax directly and sort this issue out, otherwise the client will handle it himself.

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CONFLICTS – 400

Which of these is the best step that can be taken in an effort to speak directly to a decision-maker at Department:

- a. Call up the Director of Revenue and tell him that you have a protest pending in Circuit Court and your client wants to make a settlement offer he cannot refuse, let's schedule a meeting.
- b. Call up the AAG assigned to the case and ask him if you can contact the Director to discuss settlement of the case, because you know he just wants to harass your client with discovery.
- c. Call up Director of Revenue, after giving notice to the AAG, and tell him that you have a policy concern that needs to be addressed and it relates to an issue that is currently pending in your Circuit Court matter.
- d. Tell your client to send an email to the Director, copying you and the AAG assigned to the case, seeking a meeting with the Director to resolve this issue immediately.

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CONFLICTS – 400

ANSWER

ANSWER: C

ABA Model Rule 4.2 - *Communication with Person Represented by Counsel* (also called the "no-contact" Rule):

- In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

ABA Opinion No. 97-408

Rule 4.2 does permit a lawyer representing a private party in a controversy with the government to communicate directly with government decision makers, within the ambit of the right to petition the government, subject to three conditions being met:

- 1) that the government official being contacted has the authority to take or recommend action in the controversy,
- 2) that the sole purpose of the communication is to address a policy issue, "including settling the controversy," and
- 3) that the lawyer provides the government's counsel with reasonable notice of his intent to directly contact the government officials so as to afford an opportunity to obtain the advice of counsel before entertaining the communication.

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CONFLICTS – 400

ANSWER (cont'd.)

But what constitutes a “policy issue”?

- ABA Opinion 97-408 says policy issue includes “settling the controversy”.
- However, Restatement of the Law Governing Lawyers holds that communications with respect to the negotiation or litigation of a specific claim are prohibited.
- Note: ISBA Op. No. 13-09 agrees with Restatement and disagrees with ABA Op. No. 97-408; ISBA conflicts with ABA.

CONFIDENTIALITY

CONFIDENTIALITY - 100

- After a hard-fought battle in Illinois Court of Appeals, you prevail in an appeal of a Notice of Deficiency, and your client is ecstatic about the decision.
- You decide to update a legal blog with a post telling about your victory and how you were able to prove your client's economic substance through various records.
- Is this in violation of any ethical rule?

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CONFIDENTIALITY – 100

ANSWER

Yes, unless you obtained permission from your client first.

Rule 1.6: *Confidentiality Of Information*

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

CONFIDENTIALITY - 200

- You are an attorney representing a Taxpayer and you receive a letter from the Department of Taxation and Finance scheduling a conciliation conference. With the letter is a memo from the Department's counsel to her client, which includes an analysis of the weaknesses in their case, and it is marked "Attorney-Client Privileged Communication."
- What should you do?

CONFIDENTIALITY – 200

Possible Answers

- A. Shred it and disregard it.
- B. Notify opposing counsel that you have it.
- C. Ask your client what they want you to do with it.
- D. Start using its contents in preparation of your case.

CONFIDENTIALITY – 200

ANSWER

B. Notify the sender.

ABA Rule 4.4: Respect For Rights Of Third Persons

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

- **Note:** the AICPA does not have a comparable rule for this situation.

CONFIDENTIALITY - 300

- You are outside legal counsel for Let's Make a Deal, LLC ("Deal"), which is selling the stock of one of its subsidiaries.
- Deal's business team makes it clear to you that they want to get the deal done ASAP.
- While negotiating the stock sale agreement with opposing counsel, you realize that representations and warranties related to the subsidiary's state tax liabilities fail to disclose material state income tax liabilities.
- **True or False** - it is ethical for you, as an attorney, to advise the CEO of Deal to execute the stock sale agreement.

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CONFIDENTIALITY – 300

ANSWER

FALSE

- ABA Model Rule No. 4.1 provides that in the course of representing a client a lawyer shall not knowingly:
 - make a false statement of material fact or law to a third party; or
 - fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6 (Confidentiality).

CONFIDENTIALITY – 400

George , your client, owns EBC, Inc. a company that manufactures and sells treadmills. EBC just received an assessment resulting from a sales and use tax audit. George says his CFO and business partner, Steve, filed the returns and handled the audit and the auditor claims that for the past 3 years, sales tax for the on-line sales has not been remitted, although it has been collected by EBC. George sends you the Notice of Determination and asks you to meet with him, alone, to discuss filing a protest on behalf of EBC. You meet with George the next day and he tells you the following:

- He had no idea they were collecting tax but not remitting it, everything seemed fine.
- In fact, that George just spent most of EBC’s cash buying up some treadmill companies in China and a new warehouse in Buffalo...and if IDOR’s assessment is deemed accurate, EBC will go under.
- Finally, the silent 50% co-owner, Maria, who provided all the money for the venture, has no idea how the company is doing and rarely checks in from her home in the Hamptons.

George wants you to represent EBC, Inc. and he wants you to file a protest and fight – his goal is to drag it out for as long as possible so that he can get the Buffalo warehouse open and the China inventory here and sold, at which point they will offer to settle. George also says he wants you to only talk with him because he’s the one who hired you, and because Maria cannot find out and Steve apparently cannot be trusted.

- **Can you honor George’s wishes and resolve this matter without alerting his partners of the Notice or the settlement terms?**

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CONFIDENTIALITY – 400

Possible Answers

- A. Yes, George is the one who hired you; you have no obligations to his partners.
- B. Yes, you are ultimately working for the benefit of the company so if all the owners are not informed it is okay.
- C. Yes, you have implied consent from George because he is one-third owner.
- D. No, EBC is your client, not George, and therefore your ethical responsibility is to EBC.

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CONFIDENTIALITY - 400

ANSWER

D. No, EBC is your client, not George, and therefore your ethical responsibility is to EBC.

– Rule 1.6: Confidentiality of Information

- (a) A lawyer **shall not reveal information** relating to the representation of a client unless the client gives **informed consent**, the disclosure is **impliedly authorized** in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);
 - (2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

Rule 1.6: Confidentiality of Information (cont'd.)

- (4) to secure legal advice about the lawyer's compliance with these Rules;
- (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (6) to comply with other law or a court order.

Ethical Issues to Consider Under Rule 1.6

- Back to basics: Who is your client?
- If you represent only the business or some of the individuals, confidentiality becomes more of an important ethical consideration
 - You may want/need information from individuals who are not your client!
- If you represent the company and all of the relevant individuals, confidentiality may seem less of an issue:
 - until there is a disagreement among the individuals!

FEES

FEES - 100

- An internet company engages you as legal counsel to seek a reduction in a \$1 million Illinois state income tax assessment on a contingency fee basis, agreeing to pay you 30% of the tax “savings” realized.
- Are you, as an attorney, ethically permitted to accept such an engagement?

Possible Answers

- A. Reverse contingency fees are banned by the ABA and AICPA ethics codes.
- B. Sophisticated companies may agree to any engagement arrangements they deem appropriate.
- C. Reverse contingency fees are always permitted by the ABA as long as the attorney is willing to accept it.
- D. Attorneys may use reverse contingency fee agreements if the client is fully informed, the agreement is in writing, and the fee is reasonable under Rule 1.5 standards.

FEES – 100

ANSWER

ANSWER: D

Attorneys may use reverse contingency fee agreements if the client is fully informed, the agreement is in writing, and the fee is reasonable under Rule 1.5 standards.

- ABA Rule 1.5 allows written contingent fee agreements (with some exception) if the fee is reasonable under specified criteria.
- AICPA Code S. 302 generally prohibits contingency fees, except in “tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.”

FEES – 200

- A lawyer with some lobbying experience and personal contacts in Springfield is asked to lobby for a proposal to reduce the sales tax rate for Sangamon County.
- The client requests that the fee be contingent, and the lawyer only gets paid if and when the proposal passes and becomes law.
- Is this arrangement allowed?

FEES – 200

ANSWER

No!

- Rule 1.5: Fees
 - (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) **or other law**.
 - (d) A lawyer shall not enter into an arrangement for, charge, or collect:
 - (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
 - (2) a contingent fee for representing a defendant in a criminal case.
- By statute, charging a contingent fee **in a lobbying matter** is prohibited in many states, such as New York.
 - N.Y. Unconsolidated Law LEG § 1-K (Lobbying Act).

FEES – 300

An attorney and a CPA can enter into a non-exclusive referral agreement, where they refer state income tax matters for planning and dispute resolution to each other, and share the fees, under which of the following scenarios:

- a. As long as they share office space and put both names on their letterhead.
- b. As long as the referral sharing fee is reasonable and it does not affect the client's fees for the services.
- c. As long as they get written consent from each client.
- d. None of the above.

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FEES – 300

ANSWER

ANSWER: D, none of the above.

Rule 5.4: *Professional Independence of a Lawyer*

(a) **A lawyer or law firm shall not share legal fees with a nonlawyer, except that:**

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

FEES – 400

Under ABA Rule 1.5 – Fees, there are eight (8) separate factors to consider in determining the “reasonableness” of a fee charged by a lawyer...

- Name 3 of the factors in determining whether a fee is reasonable under Rule 1.5.

FEES – 400

ANSWER

RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the **time and labor** required, the **novelty and difficulty** of the questions involved, and the **skill requisite** to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will **preclude other employment by the lawyer**;
- (3) the **fee customarily charged in the locality for similar legal services**;
- (4) the **amount involved and the results obtained**;
- (5) the **time limitations** imposed by the client or by the circumstances;
- (6) the nature and length of the professional **relationship with the client**;
- (7) the **experience, reputation, and ability of the lawyer** or lawyers performing the services; and
- (8) whether the fee is **fixed or contingent**.

MISCONDUCT

MISCONDUCT - 100

- The Illinois State Officials and Employees Ethics Act (5 ILCS 430) was signed into law in 2003 to provide a codified legal framework for the ethical standards for all Illinois employees and officials, including focus on such things as gift bans, confidentiality, and required annual ethics training.
- Who championed this important bill and then signed it into law?

Fourth (out of last ten!) Illinois Governor to Wear Stripes



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MISCONDUCT - 200

- A client comes to you with a new planning idea that is frowned upon by most states.
- The client is willing to spend big bucks in defending its controversial position.
- After analyzing the state statutes, regulations and applicable case law, you believe that the Chicago Bears have a better chance of winning the Super Bowl than this planning idea will have to be accepted by any state tax administrator, ALJ, or court.
- Can you, as legal counsel, accept that engagement?

MISCONDUCT – 200

ANSWER

ANSWER: No (at least not with the way the Bears look for this year)

- **ABA Model Rule 3.1** states that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

MISCONDUCT – 300

- You are a CPA. A new client has come to you and said that after six years of operating “under the radar” in State A that it needs to “get right” and start filing sales tax returns.
- You are preparing and you will sign the initial tax return for the current period in State A.
- The initial return asks: “What was the first date the company began doing business in the state?”
- Can you leave the answer blank, as you know it would be disadvantageous to your client if you respond that they began doing business in the state six years ago?

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MISCONDUCT – 300

ANSWER

No!

AICPA SSTS No. 2: *Answers to Questions on Returns*,
para. 5:

e.g., when signing a return on which question(s) have not been answered

- A CPA must make a reasonable attempt to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a return before signing.
- **Must not omit an answer merely because it might prove disadvantageous to taxpayer.**

MISCONDUCT – 400

- You are a CPA and the Director of State Tax for ABC Corp. Illinois is conducting a sales tax audit and the auditor has identified approximately \$10,000,000 in adjustments.
- You decide to invite the auditor to your golf club to discuss the audit. After a round and a great dinner, you mention that you might be able to sponsor him for a free club membership, if he would be willing to negotiate the audit findings.
- The next day, the auditor revises the audit to \$10,000 and states that he had made an error.
- You do not get him a free club membership.
- Have you acted ethically?

Possible Answers

- A. There are no ethical implications in buying the auditor a dinner and a round of golf.
- B. There is no ethical violation if the auditor truly believes that only \$10,000 was due.
- C. The facts establish bribery and is an ethical violation.
- D. It would only be unethical if you actually went through with the free golf membership.

MISCONDUCT – 400

ANSWER

ANSWER: C

The facts establish bribery and that is an ethical violation

- **AICPA ET Section 501** holds that “A member shall not commit an act discreditable to the profession.”
- This type of behavior, offering a bribe, would most likely be considered to be “discreditable” to the CPA profession.

POTPOURRI

POTPOURRI - 100

- True or False?
- Treasury Department Circular 230 (Rev. 8-2011) (“Circular 230”) was promulgated to provide rules governing the recognition of attorneys, CPAs, enrolled agents, enrolled retirement plan agents, registered tax return preparers and other persons representing taxpayers before the Internal Revenue Service and all state-level tax administrators.

POTPOURRI – 100

ANSWER

False.

- Circular 230 only applies to attorneys, CPAs, enrolled agents, enrolled retirement plan agents, registered tax return preparers and other persons representing taxpayers before the Internal Revenue Service.
- *See* Circular 230, §10.0.

POTPOURRI - 200

True or False?

As a Illinois lawyer, you may enter into an agreement with your client, prospectively limiting your liability to that client for malpractice, but only if your client has independent representation when entering into that agreement.

POTPOURRI – 200

ANSWER

ANSWER: True!

Rule 1.8 Conflict Of Interest: *Current Clients: Specific Rules*

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice **unless the client is independently represented in making the agreement;**

POTPOURRI - 300

A CPA may *recommend a tax return position* if what two conditions are met?

POTPOURRI – 300

ANSWER

- AICPA SSTS No. 1, *Tax Return Positions*, paragraph 5(b) provides that, notwithstanding paragraph 5(a), a CPA may ***recommend a tax return position*** if the CPA
 - (i) concludes that there is a reasonable basis for the position and
 - (ii) advises the taxpayer to appropriately disclose that position.

POTPOURRI - 400

You are an Illinois CPA -

- Under what two circumstances are you allowed to use estimates in the preparation of a tax return?
 - (1) You determine that the estimates are reasonable based on the facts and circumstances known to you,

and

(2) ??

[Next](#)

POTPOURRI – 400

ANSWER

- ANSWER:

When it is not practical for your client to obtain exact data

- AICPA SSTS No. 4, *Use of Estimates*, provides that “[u]nless prohibited by statute or by rule, a [CPA] may use the taxpayer’s estimates in the preparation of a tax return if it is not practical to obtain exact data and if the [CPA] determines that the estimates are reasonable based on the facts and circumstances known to the [CPA]. The taxpayer’s estimates should be presented in a manner that does not imply greater accuracy than exists.”

FINAL JEOPARDY

TAXPAYERS' FEDERATION OF ILLINOIS

TAXPAYERS' FEDERATION OF ILLINOIS

Q: What year was the Taxpayers' Federation of Illinois formed and issued its State Charter?

TAXPAYERS' FEDERATION OF ILLINOIS

Answer: 1940

Helpful Materials

Helpful Materials When Considering an Ethics Question in State and Local Tax Matters

Sources of Guidance

- Government-Imposed Rules
- Rules Imposed on Revenue Departments
- Professional Organizations
- Corporate Policies
- Personal Convictions

Ethics Code Sources

- **Professional Organizations**
 - **American Bar Association (ABA)**
 - **Illinois State Bar Association (ISBA)**
 - **American Institute of Certified Public Accountants (AICPA)**
- **Government-Imposed Rules**
 - State and local rules governing practice before tribunals and administrators
 - Sarbanes Oxley (2002)
 - Circular 230
- **Rules Imposed on Revenue Departments**
 - Taxpayers' Bill of Rights
 - Codes of conduct for government employees
- **Corporate Policies**
 - Association of Corporate Counsel
- **Personal Convictions**

Thanks for playing!

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