Frequently Asked Questions:

General Ethics Questions

As of August 2016

AICPA Professional Ethics Division

INTRODUCTION

The answers to these frequently asked questions (FAQs) are based on guidance the AICPA Professional Ethics Division staff provided in response to members' inquiries. The FAQs are not rules, regulations, or statements of the Professional Ethics Executive Committee and, therefore, are not authoritative guidance. The Conceptual Framework for Members in Public Practice (ET sec. 1.000.010)[1] and The Conceptual Framework for Members in Business (ET sec. 2.000.010) should be used in conjunction with these FAQs. Further, the answers do not address the requirements of other regulatory bodies, such as the state boards of accountancy, the Securities and Exchange Commission (SEC), and the U.S. Government Accountability Office whose positions may differ from those of the AICPA.

Terms that are defined in the AICPA code appear in italic. The first time a defined term or citation to the AICPA code appears, it will be linked.

The date the FAQ was added or revised appears in brackets at the end of the answer. Dates are not given for purely editorial revisions (for example, revised citations for the code).

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New York, NY 10036-8775

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[1] All ET sections can be found in AICPA *Professional Standards*.

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BLIND TRUSTS

Question. A *covered member* creates a blind trust and transfers assets into the blind trust. The *covered member* will not supervise or participate in the trust's investment decisions during the term of the trust. Will the trust and the underlying assets be considered the *covered member's direct financial interests*?

Answer. Although the *covered member* will not supervise or participate in the trust's investments decisions during the term of the trust, the trust and the underlying investments will be considered the *covered member's direct financial interest* if: (1) the *covered member* retains the right to amend or revoke the trust, or (2) the underlying trust investments will ultimately revert to the *covered member* as the grantor of the trust. See the "Trusts Investments" interpretation (ET sec. 1.245.020) under the "Independence Rule*"* (ET sec. 1.200.001)for other rights and responsibilities that would cause a trust and the underlying investments to be considered *direct financial interests* of a *covered membe*r. [December 2012]

CAMPAIGN CONTRIBUTIONS

***Question*.** May a *member* make a political contribution to the campaign of an individual that is associated with an *attest client* in a *key position* or holds a *financial interest* in the *attest client* that is material and/or enables the individual to exercise *significant influence* over the *attest client* without *impairing independence* or violating any other rule of conduct?

***Answer*.** Yes. A *member* would not *impair independence* or be in violation of any other rule of conduct provided the political contribution is not made with the intention of influencing the procurement of *professional services* or in contravention of federal or state laws or regulations.

Related Guidance: "Offering or Accepting Gifts or Entertainment" interpretation (ET sec. 1.285.010) under the "Independence Rule" and "Offering or Accepting Gifts or Entertainment" interpretation (ET sec. 1.120.010) under the "Integrity and Objectivity Rule" (ET sec. 1.100.001) [August 2012]

DISCLOSURE OF COMMISSIONS

***Question*.** When is a *member* required to disclose to a *client* that a commission will be received under the "Commissions and Referral Fees Rule*"* ET sec. 1.520.001)?

***Answer*.** A *member* should disclose that a commission would be received at the time the referral is being made so that the *client* can decide whether to act on the recommendation**.**

Related Guidance: "Receipt of a Commission" interpretation (ET sec. 1.520.020) [August 2012]

INDEPENDENT CONTRACTORS

***Question*.** Would *independence* be *impaired* if a CPA *firm* retained an independent contractor (as defined by IRS regulations and other federal regulatory guidance such as case law and revenue rulings) on a part-time basis that is employed by or associated with an *attest client* in a *key position*?

***Answer*.** Yes. *Independence* would be *impaired* if an independent contractor retained by the *firm* was simultaneously employed by or associated with an *attest client* in a *key position*.

However, if the independent contractor is employed by or associated with the *attest client* in a non-key position, a *member* should consider the following criteria when determining if *independence* (in fact and appearance) is *impaired*:

a. Location of the *firm office* where the independent contractor will work in relation to the location of the office providing services to the *attest client*.

b. Whether the independent contractor performs services for other *firms* or entities or solely to the *member's firm*. Factors to consider include but are not limited to:

i. The percentage of income the individual derives from the *member's firm* in relation to the individual's total "self-employed" or earned income.

ii. The percentage of income the individual derives from the *client* entity in relation to the individual's total earned income.

iii. The amount of time the individual devotes to the *member's firm* versus time devoted to the *attest client*.

iv. The amount of time the individual devotes to the *member's firm* versus time devoted to other *firms* or entities.

In situations in which the *threats* to *independence* (in fact or appearance) are deemed not significant, the *member* or the *member's firm* should consider the potential conflict of interest arising from such a relationship as set forth in the "Conflicts of Interest for Members in Public Practice" interpretation (ET sec. 1.110.010) under "Integrity and Objectivity Rule". If *threats* are deemed significant, the *member* should consider whether *safeguards* are available to eliminate or reduce them to an *acceptable level*. If no *safeguards* could eliminate or reduce *threats* to an *acceptable level*, *independence* would be considered *impaired*.

Related Guidance: "Conceptual Framework for Independence" interpretation (ET sec. 1.210.010). [August 2012]

LETTER OF INTENT TO PURCHASE PRACTICE

***Question*.** Would *independence* be *impaired* under the "Independence Rule" if a *member* enters into a non-binding letter of intent to sell his or her practice to a purchaser that is not *independent* with respect to one or more of the *member's attest clients*?

***Answer*.** No. A non-binding letter of intent to sell the *member's* practice would not *impair* the *independence* of the *member* if the purchaser is not *independent* with respect to one or more of the *member's attest clients*. [August 2013]

PRO BONO/BELOW COST FEES

***Question*.** May a *member* perform *professional services* for a *client* for no fee or for a fee that is below cost without *impairing independence* or violating any other rule of conduct?

***Answer*.** Yes. However, regardless of what fee is charged, *members* are required to comply with all professional standards that are applicable to the services performed. For example, a *member* must comply with the "General Standards Rule" *(*ET sec. 1.300.001*)*, which requires *members* to

- only undertake those *professional services* that the *member* or the *member's firm* can reasonably expect to be completed with professional competence.
- exercise due professional care in the performance of *professional services*.
- adequately plan and supervise the performance of *professional services*.
- obtain relevant data to afford a reasonable basis for conclusions or recommendations in relation to any *professional services* performed.

The *member's* state board(s) of accountancy may have rules that are more restrictive than provided in the above guidance. Accordingly, *members* should consult with their state board(s) of accountancy for guidance.

Professional services performed for a *client* for no fee or a fee below cost would not be considered a gift for purposes of applying the "Gifts and Entertainment" subtopic *(*ET sec. 1.120.010) of the "Integrity and Objectivity Rule" and the "Gifts and Entertainment" subtopic (ET sec. 1.285.010) of the "Independence Rule."

Related Guidance: "Independence Rule", "Unpaid Fees" interpretation (ET sec. 1.230.010), "Integrity and Objectivity Rule," "General Standards Rule," "Compliance with Standards Rule" (ET sec. 1.310.001), "Accounting Principles Rule" (ET sec. 1.320.001), "Confidential Client Information Rule" (ET sec. 1.700.001), "Contingent Fee Rule" (ET sec. 1.510.001), "Commissions and Referral Fees Rule*"* (ET sec. 1.520.001), "Acts Discreditable Rule" (ET sec. 1.400.001), "Advertising and Other Forms of Solicitation Rule" (ET sec. 1.600.001). [August 2012; Revised August 2014]

COMPLIANCE WITH SSCS's WHEN MEMBER DOES NOT HOLD OUT AS CPA

***Question*.** The "Compliance with Standards Rule" requires that a *member* who performs *professional services*, including consulting services, comply with standards promulgated by bodies designated by *Council*, regardless of whether the *member* is holding out as a CPA. The standards applicable to members performing consulting services are set forth in the Statements on Standards for Consulting Services (SSCSs) and specifically state that such standards apply to *members* holding out as a CPA while providing consulting services. Would a *member* who does not hold out as a CPA be in compliance with "Compliance with Standards Rule" if the member did not comply with the SSCSs while performing consulting services for a *client*?

***Answer*.** Yes. Because the SSCSs apply to those *members* holding out as CPAs, a *member* who does not hold out as a CPA would not be in violation of "Compliance with Standards Rule" if the *member* performed consulting services that did not comply with the SSCSs. The *member* must still comply with all other rules of the code, including the "General Standards Rule" which requires that the member comply with the following standards:

a. Professional Competence. Undertake only those *professional services* that the member or the member's *firm* can reasonably expect to be completed with professional competence.
b. Due Professional Care. Exercise due professional care in the performance of *professional services*.
c. Planning and Supervision. Adequately plan and supervise the performance of *professional services*.
d. Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any *professional services* performed.

USE OF STANDARDS THAT HAVE NOT BEEN ESTABLISHED BY A BODY DESIGNATED BY AICPA COUNCIL

Question 1: May a *member* perform a *professional service* using standards that have not been established by a body designated by AICPA *Council*, as set forth in appendix A, "Council Resolution Designating Bodies to Promulgate Technical Standards" (Council resolution) (ET appendix A) of the AICPA Code of Professional Conduct (hereinafter referred to as "alternative standards")?

Answer 1: Yes, there are circumstances in which a *member* is permitted to perform a *professional* service using alternative standards. However, the *member* must consider whether the *professional service* can be covered by technical standards established by a body designated by AICPA *Council* (hereinafter referred to as "established standards"). Examples of such standards are the Statements on Auditing Standards (SASs), Statements on Standards for Attestation Engagements (SSAEs), Statements on Standards for Accounting and Review Services (SSARSs) and Statement on Standards for Consulting Services (SSCS). The "Compliance With Standards Rule" (ET sec. 1.310.001 and 2.310.001) states the following:

A member who performs auditing, review, compilation, management consulting, tax, or other professional services shall comply with standards promulgated by bodies designated by *Council*.

The Council resolution sets forth those bodies designated by *Council* to promulgate technical standards and includes AICPA standard-setting bodies, such as the Accounting and Review Services Committee (ARSC), Auditing Standards Board (ASB), and Management Consulting Services Executive Committee. (See all bodies designated by Council at appendix A).

When a *member* is engaged to perform a *professional service* that can be covered by established standards, the *member* must perform the service using such established standards. The *member* is permitted to also apply any relevant alternative standards.

When a *member* is engaged to perform a *professional service* that, based on his or her professional judgment, cannot be covered by established standards, the *member* will not be considered to be in violation of the "Compliance With Standards Rule" if only the alternative standards are applied.

Irrespective of the *professional service* performed by the *member* and whether he or she applies established or alternative standards, or both, the *member* must always comply with the "General Standards Rule" (ET sec. 1.300.001 and 2.300.001) when performing any *professional service*. This rule requires that a *member* comply with the following standards:

a. Professional competence. Undertake only those professional services that the member or the member's *firm* can reasonably expect to be completed with professional competence.

b. Due professional care. Exercise due professional care in the performance of professional services.

c. Planning and supervision. Adequately plan and supervise the performance of professional services.

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

Members should also be aware that laws or regulations, including state boards of accountancy rules and regulations, may require the *professional service* to be performed under established standards. [May 2016]

FORM OF COMMUNICAITON

Question. The "Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice" interpretation [1.400.205] requires certain communications to the *client* be in writing. Would electronic communications such as email be an acceptable form of communication?

Answer. Yes, provided electronic communication is considered an acceptable form of written notice to the *client* under the applicable state law. [August 2016]

TRANSFER OF CLIENT FILES TO ANOTHER PARTNER IN THE FIRM

Question. When a *partner* leaves a *firm* and his or her *clients* are transferred to another *partner* in the *firm*, do the requirements of the "Transfer of Files and Return of Client Records in Sales, Transfer, Discontinuance or Acquisition of Practice" interpretation need to be applied?

Answer. No. In such situations the ownership of the *firm* has not been transferred outside of the *firm*, rather the *clients* have only been reassigned to a different *partner* in the *firm*. [August 2016]

ELECTRONIC RECORDS

Question 1: Are the electronic data files created when a *member* prepares a tax return for a *client* using the *member's* own tax preparation software considered to be a *member's* working paper or a member-prepared record as defined in the "Records Requests" interpretation (ET sec. 1.400.200), and must it be provided to the *client* upon request?"

Answer 1: The electronic tax data file would generally be considered a *member's* working paper that has been created in the performance of the tax return preparation engagement but not a file that the *member* was specifically engaged to prepare (that is, the tax return is the work product the member has been engaged to prepare). The information contained in the tax data file is typically obtained from the *client's* books and records as well as the *client's* representations. Such information should therefore be available to the *client* through means other than the tax data file and the *client's* tax return records would not be rendered incomplete without the tax data file. Accordingly, the tax data file would not meet the description of a member-prepared record.
Working papers are considered to be the *member's* property under the interpretation and therefore, a *member* would not be required to provide the electronic data file to the *client*. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the *member*. The *member* must observe the highest standard of professional conduct which exists in the matter. [August 2015]

Question 2: Are account grouping schedules, depreciation schedules and carryover schedules prepared by a *member* to support a *client's* business tax return considered to be a *member's* working paper or a member-prepared record as defined in the "Records Requests" interpretation *and* must they be provided to the *client* upon request?

Answer 2: Grouping schedules, depreciation schedules and carryover schedules, are considered member-prepared records. However, since the *client's* records would be incomplete without this information the *member* would need to provide them to the *client* unless fees remain unpaid for the tax engagement. [August 2015]

Question 3: Are the adjusting entries proposed by a *member* to reconcile a *client's* book and tax records considered to be a *member's* working paper or a member-prepared records as defined in the "Records Requests" interpretation and must they be provided to the *client* upon request?

Answer 3: These adjusting entries are considered member-prepared records. Since the *client's* records would be incomplete without this information the *member* would need to

provide them to the *client* unless fees remain unpaid for the tax engagement. [August 2015]

Sample - Client Provided Records

- Balance Sheet and Income Statement
- Unadjusted Trial Balance
- Third-Party Tax Forms, such as 1099 series (MISC, DIV, INT, etc.)
- Original Receipts or Substantiation Logs
- Payroll or Sales Tax Reporting Returns

Sample - Member's Working Papers

- Adjusted Trial Balance
- Scan or Copy of Client Records with Footing and Notes
- Results of Research, Notes to File and Calculations

Sample - Member Prepared Records

- Tax Return Grouping Schedules
- Book and Tax Adjusting Entries (Schedule M Support)
- Depreciation Schedules, Carryover Schedules

[August 2015]