

What's Love (or Ethics) Got to Do With It?



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Ethical Challenges

- Efficiency versus integrity
- Clients want 24/7 access
- Remote access for employees
- Social media usage
 - Company
 - Employees
- Referral sources versus clients
- Generating revenue

Ethical Balancing Act

- Company
 - Risk or liability
 - Productivity
 - Fairness and trust
- Employees
 - Work/life balance
 - Privacy
 - Fairness and trust
- Client
 - Quality work
 - Low cost
 - Access

Ethical Guidelines

- ASPPA's Code of Professional Conduct
 - Last amended October 16, 2015
- IRS Circular 230 applies to any individual who for compensation (Section 10.8(c)):
 - Prepares, or assists in the preparation of
 - All or a substantial portion of a document
 - Pertaining to any taxpayer's tax liability
 - For submission to the Internal Revenue Service

My Way

- At the last conference, you attended a session about DB/DC combo plans. Your TPA business is doing well, but could be doing better. You can purchase a module from your software vendor to administer DB plans. A referral source does DB plans and you believe she is an enrolled actuary. She could always assist if needed. Is it time to turbo-charge the practice?

Ethical Considerations

- ASPPA §11 “A Member shall...perform professional services, only when qualified to do so based on education, training, and experience.”

Ethical Considerations

- Circular 230, Section 10.35(a):
- “A practitioner must possess the necessary competence to engage in practice before the [IRS]”
- Circular 230, Section 10.36(a):
- Any individual who has principal authority and responsibility for overseeing a firm’s practice governed by Circular 230, must take reasonable steps to ensure that the firm has adequate procedures in effect for all employees for purposes of complying with Circular 230.

Thoughts?

- Is attending a conference session enough?
- Purchase of software sufficient?
- Having an enrolled actuary as a friend?

Poll #1: Artist Please?

My Way

- A. Rolling Stones
- B. 311
- C. Frank Sinatra
- D. Taylor Swift

Spider Webs

- You administer a 401(k) plan for a medical group and they are a terrible client. They provide census information late and it usually has errors. They have transmitted deferrals late. They don't timely respond to your inquiries. You recently learned that one of the doctors owns another entity in the medical field. You are concerned a CG or ASG exists and inform the client. They tell you that another firm will be administering the plan. At the next local meeting, another member tells you that the medical group is a new client and wants to hear your experience with them.

Ethical Considerations

- ASPPA §5 “A member shall not disclose to another party any confidential information obtained in rendering professional services for a principal unless authorized to do so by the principal or required to do so by law.”
- ASPPA §8(A) “A Member shall perform professional services with courtesy and shall cooperate with others in the principal’s interest.”

Thoughts?

- What do you tell the other member about her new client?
 - Late or incorrect census data?
 - Late deferrals?
 - Potential CG or ASG?

Poll #2: Artist Please?

Spider Webs

- A. No Doubt
- B. Taylor Swift
- C. Metallica
- D. Tom Jones

Big Pimpin'

- You are proud to have the largest boat manufacturer in town as a client. The second-largest boat maker (and growing) has left its current TPA and asked if you would like to administer its retirement plans.

Ethical Considerations

- ASPPA §6 “If the member is aware of any significant conflict between the interests of a principal and the interests of another party, the member should advise the principal of the conflict and include appropriate qualifications or disclosures in any related communication.

Ethical Considerations

- Circular 230, Section 10.29(a):
 - “... a practitioner shall not represent a client before the [IRS] if the representation involves a conflict of interest. A conflict of interest exists if:
 - The representation of one client will be directly adverse to another client; or
 - There is a significant risk that the representation will be materially limited by responsibilities to another client.”

Thoughts?

- Is there a conflict in representing competitors?
- What if you take on second-best boat manufacturer and they ask you to assist in putting together a benefits package in order to recruit best boat maker's top employee?

Poll #3: Artist Please?

Big Pimpin'

- A. Notorious BIG
- B. Jay Z
- C. Sean Puffy Combs
- D. Taylor Swift

Insane in the Brain

- The contact for your largest client calls you with a concern. The contact is Facebook friends with your administrator responsible for the account. Recently, your administrator posted photos of him at a party. The photos appear to show drug paraphernalia as well. The contact wants the administrator removed from the account.

Ethical Considerations

- ASPPA § 8(A) “A principal has an indisputable right to choose a professional adviser. “
- ASPPA § 10 “A member shall perform professional services, and shall take reasonable steps to ensure that professional services rendered under the member’s supervision are performed, with honesty, integrity, skill, and care.”

Thoughts?

- What do you say to the client?
- What do you say to the administrator?
- Should the administrator be replaced?
- Is it a conflict of interest?
- Does it matter that it is not in the course of employment?
- Does your company have applicable policies?

Poll #4: Artist Please?

Insane In The Brain

- A. Cypress Hill
- B. Molly Hatchet
- C. Taylor Swift
- D. Iron Maiden

Nobody Does It Better

- While working with a website designer, she provides a few suggestions:
 - State that you are the #1 TPA in the market area
 - State all employees' credentials
 - List recognizable clients

Ethical Considerations

- ASPPA §2 “Member shall not engage in any advertising with respect to professional services that the member knows or is reasonably expected to know are false.”

Thoughts?

- Is there a recognizable market area?
- Can you state the whole office is credentialed when one employee is still in the testing phase?
- What if your one ERPA employee leaves?
- Can you list clients without their consent? Is being a client confidential information?

Poll #5: Artist Please?

Nobody Does It Better

- A. Taylor Swift
- B. Tina Turner
- C. Gwen Stefani
- D. Carly Simon

Blank Space

- A potential client wants to adopt a plan before the end of the calendar year. Although you talk in the fall, it is soon December before the client commits. You scramble to get the document prepared and to the client by December 20th. The client calls you to state that he is out of the country until January, but will sign the document when he returns. He asks you to enter the date next to the signature line as December 31, 2017.

Ethical Considerations

- ASPPA §7 “A member shall not perform professional services when the member has reason to believe that they may be altered in a material way or may be used to violate or evade the law. The member should recognize the risk that materials prepared by the member could be misquoted, misinterpreted, or otherwise misused...and should take reasonable steps to ensure that the material is presented fairly...”

Thoughts?

- Do you hard date the document as December 31, 2017 per the client's instructions?
- How about December ____, 2017?
- How about just a blank line?

Poll #6: Artist Please?

Blank Space

- A. L.A. Guns
- B. Taylor Swift
- C. Miley Cyrus
- D. Notorious BIG

Under Pressure

- A great client made an inadvertent mistake in the middle of 2016 that resulted in one deferral transmission being late. The mistake was corrected after only a couple days. In preparing the Form 5500, the client has asked you enter “no” under the failure to timely transmit a compliance question.

Ethical Considerations

- ASPPA §7 “A member shall not perform professional services when the member has reason to believe that they may be altered in a material way or may be used to violate or evade the law.”

Ethical Considerations

- Circular 230, Section 10.21:
 - “A practitioner who, having been retained by a client with respect to a matter administered by the [IRS], knows that the client has...made an error in or omission from any return...must advise the client promptly of the...consequences as provided under the code and regulations of such noncompliance, error, or omission.”
- Circular 230, Section 10.34(b):
 - “A practitioner may not advise a client to submit a document...to the [IRS]...[t]hat contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.”

Thoughts?

- Do you follow the client's instructions?
- What do you communicate to the client?
- What if you already marked yes and completed the Form 5330 and client wants you to change it?

Poll #7: Artist Please?

Under Pressure

- A. Queen
- B. Billy Joel
- C. Taylor Swift
- D. Guns n' Roses

Don't Worry, Be Happy

- The controller of a long-time client informs you that she will now be your contact person and will be transmitting the contributions. During the next few months, you notice that the contribution timing is inconsistent and sometimes late. The HR rep you used to work with calls you. She says her account balance doesn't correspond with the amount being taken out of her pay. When you contact the controller, she just says the company has fallen on tough financial times.

Ethical Considerations

- ASPPA §6 “A member shall not perform professional services involving an actual conflict of interest unless: (i) the member’s ability to act fairly is unimpaired; and (ii) there has been full disclosure of the conflict to the principal(s); and (iii) all principals have expressly agreed to the performance of the services by the member.”
- ASPPA §1 “Principal: any present or prospective client of a member...”

Ethical Considerations

- Circular 230, Section 10.21:
 - “A practitioner who, having been retained by a client with respect to a matter administered by the [IRS], knows that the client has...made an error in or omission from any return...must advise the client promptly of the...consequences as provided under the code and regulations of such noncompliance, error, or omission.”

Thoughts?

- Who is your client?
- Is there a conflict of interest?
- Do you communicate with the CFO?
- Do you communicate with the HR rep who is also a participant?
- Should you contact the DOL?

Poll #8: Artist Please?

Don't Worry, Be Happy

- A. Tom Jones
- B. Bobby McFerrin
- C. Paul Simon
- D. Five Finger Death Punch

Give a Little Bit

- You send your year-end census request to a client you picked up in 2016. Instead of giving you all employee information, the client provides an excel spreadsheet detailing just the employees who the client believes are participants.

Ethical Considerations

- ASPPA §7 “The member should recognize the risk that materials prepared by the member could be misquoted, misinterpreted, or otherwise misused by another party to influence the actions of a third party and should take reasonable steps to ensure that the material is presented fairly and that the sources of the material are identified.”

Ethical Considerations

- Circular 230, Section 10.34(d):
- “A practitioner advising a client to take a position on a tax return, document, affidavit, or other paper submitted to the [IRS]...generally may rely in good faith without verification upon information furnished by the client. The practitioner...must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent, ...or incomplete.”

Thoughts?

- Do you rely on information?
- Is accurate information provided?
- Do you investigate further?
- What about your service agreement?

Poll #9: Artist Please?

Give a Little Bit

- A. Taylor Swift
- B. The Commodores
- C. Kiss
- D. Super Tramp

Enter Sandman

- You are representing your client through routine IRS audit. While collecting information for response to the Information Document Request, your client tells you that the EGTRRA restatement was never signed, but the PPA restatement was timely signed. The client asks you to tell the IRS that the EGTRRA restatement can't be found.

Ethical Considerations

- ASPPA §3 “A member who issues a professional communication shall take appropriate steps to ensure that the professional communication is appropriate to the circumstances and its intended audience.”

Ethical Considerations

- Circular 230, Section 10.21:
 - “A practitioner who, having been retained by a client with respect to a matter administered by the [IRS], knows that the client has...made an error in or omission from any return...must advise the client promptly of the...consequences as provided under the code and regulations of such noncompliance, error, or omission.”
- Circular 230, Section 10.22(a):
 - “A practitioner must exercise due diligence... [i]n determining the correctness of...representations made by the practitioner to the [IRS].”

Thoughts?

- How do you respond to the client?
- How do you respond to the IRS agent?
- What if client doesn't follow your advice?

Poll #10: Artist Please?

Enter Sandman

- A. Right Said Fred
- B. Metallica
- C. Iron Maiden
- D. Spoon

Two Out of Three Ain't Bad

- A new client comes on board and you are reviewing the plan's information from prior years. You discover that the client failed to allocate top-heavy minimum contributions from 2008-2010 and 2012 to the present. You recommend a VCP submission. The client agrees, but only wants to fix 2012 to the present.

Ethical Considerations

- ASPPA §10 “A member has an obligation to observe standards of professional conduct in the course of providing advice, recommendations, and other services performed for a principal.”

Ethical Considerations

- Circular 230, Section 10.22(a):
 - “A practitioner must exercise due diligence...[i]n preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to [IRS] matters.”
- Circular 230, Section 10.34(b):
 - “A practitioner may not advise a client to submit a document...to the [IRS]...[t]hat contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good-faith challenge to the rule or regulation.”

Thoughts?

- Do you complete the VCP submission?
- Penalty of Perjury statement?
- What do you communicate with the client?
- Do you assist with the client submitting the VCP submission?

Poll #11: Artist Please?

Two Out of Three Ain't Bad

- A. Meatloaf
- B. Cake
- C. The Cranberries
- D. Red Hot Chili Peppers

Bad Romance

- One of your administrators begins to date the plan contact for one of his accounts. After a while, the relationship ends. You hear from others that it didn't end well. Shortly thereafter, your administrator confides in you that he believes the plan contact was personally keeping loan repayments instead of depositing them into the plan.

Ethical Considerations

- ASPPA §6 “A member shall not perform professional services involving an actual conflict of interest unless: (i) the member’s ability to act fairly is unimpaired; and (ii) there has been full disclosure of the conflict to the principal(s); and (iii) all principals have expressly agreed to the performance of the services by the member.”
- ASPPA §10 “A member shall perform professional services, and shall take reasonable steps to ensure that professional services rendered under the member’s supervision are performed, with honesty, integrity, skill, and care.”

Thoughts?

- Was the relationship a conflict of interest?
- Should you have prevented or monitored the relationship?
- How do you proceed with your administrator's information?
- Do you contact the DOL? Police?

Poll #12: Artist Please?

Bad Romance

- A. Taylor Swift
- B. Carly Rae Jepsen
- C. Lady Gaga
- D. Queen Latifah

Friends in Low Places

- Bill is an investment adviser and fantastic referral source. He introduces you to a client who just went through a business transaction. The client sold most of its assets to another company and most of the clients were employed by the other company. The client intends to maintain its current plan for the few remaining employees. The client informs you that Bill said the employee now with the other company could not take a distribution from the current plan until termination from the new company.

Ethical Considerations

- ASPPA § 6 “If the member is aware of any significant conflict between the interests of a principal and the interests of another party, the member should advise the principal of the conflict and include appropriate qualifications or disclosures in any related communication.”

Thoughts?

- What do you communicate to the client?
- What do you communicate to Bill?
- When?

Poll #13: Artist Please?

Friends in Low Places

- A. Waylon Jennings
- B. Willie Nelson
- C. George Strait
- D. Garth Brooks

Questions?

2018 ASPPA Spring Virtual Conference

**Thursday, May 10
9:00 am to 5:00 pm**

Five Sessions Including:

**Washington Update and Late-Breaking Regulatory Developments
Ask the Experts Panel**