

# ETHICAL PRACTICES & THE DANGERS OF GETTING TOO CLOSE TO CLIENTS

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# WHAT WOULD YOU DO IF... YOUR PARENT OR CHILD CAME TO YOU AND TOLD YOU THAT THEY DO NOT REPORT CASH INCOME, BUT IT DOES NOT AFFECT THEIR TAX DUE?

Raise your hand with the number you identify with the most?

1. Report them to the IRS
2. Talk to them about the dangers of not reporting it
3. Ignore it and pretend you didn't hear it

# WHAT WOULD YOU DO IF... YOUR VERY BEST FRIEND CAME TO YOU AND TOLD YOU THAT THEY DO NOT REPORT CASH INCOME OF \$2,000?

Raise your hand with the number you identify with the most?

1. Report them to the IRS
2. Talk to them about the dangers of not reporting it
3. Ignore it and pretend you didn't hear it

# WHAT WOULD YOU DO IF... YOUR ONLY CLIENT CAME TO YOU AND TOLD YOU THAT THEY DO NOT WANT TO REPORT INCOME OF \$500,000 THAT WOULDN'T BE REPORTED TO THE IRS?

Raise your hand with the number you identify with the most?

1. Report them to the IRS
2. Talk to them about the dangers of not reporting it
3. Ignore it and pretend you didn't hear it



# WHAT WOULD YOU DO IF... YOUR CLIENT ASKED YOU TO CREATE A DOCUMENT THAT ASSISTS THEM DURING AN IRS AUDIT?

Raise your hand with the number you identify with the most?

1. Tell them no
2. If the document is accurate, why not?

# AICPA CODE OF CONDUCT



## Objectivity and Independence Principle:

- “A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities.” (0.300.050.01)
- “Regardless of service or capacity, members should protect the integrity of their work, maintain objectivity, and avoid any subordination of their judgment.” (0.300.050.03)

# CIRCULAR 230 - INDEPENDENCE

“Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice, includ[ing] ... acting fairly and with integrity in practice before the Internal Revenue Service.”  
(10.33(a))



# **MANIPULATION**

**control or influence**

**cleverly, unfairly, or unscrupulously in a**

**skillful manner**

# MANIPULATION

- 1. Deception:** Providing false information or withholding important details to mislead others.
- 2. Gaslighting:** Manipulating someone into doubting their own perception, memory, or sanity.
- 3. Guilt Tripping:** Making someone feel guilty or responsible for actions or situations, even when they are not at fault.
- 4. Silent Treatment:** Using silence and emotional withdrawal as a way to manipulate someone's emotions and behavior.





# MANIPULATION

- 5. **Flattery:** Giving excessive compliments or praise to gain favor or influence over someone.
- 6. **Playing the Victim:** Portraying oneself as a victim to gain sympathy and manipulate others into doing what one wants.
- 7. **Peer Pressure:** Influencing someone's behavior by making them feel like they need to conform to the actions and opinions of a group.



# A CAUTIONARY TALE

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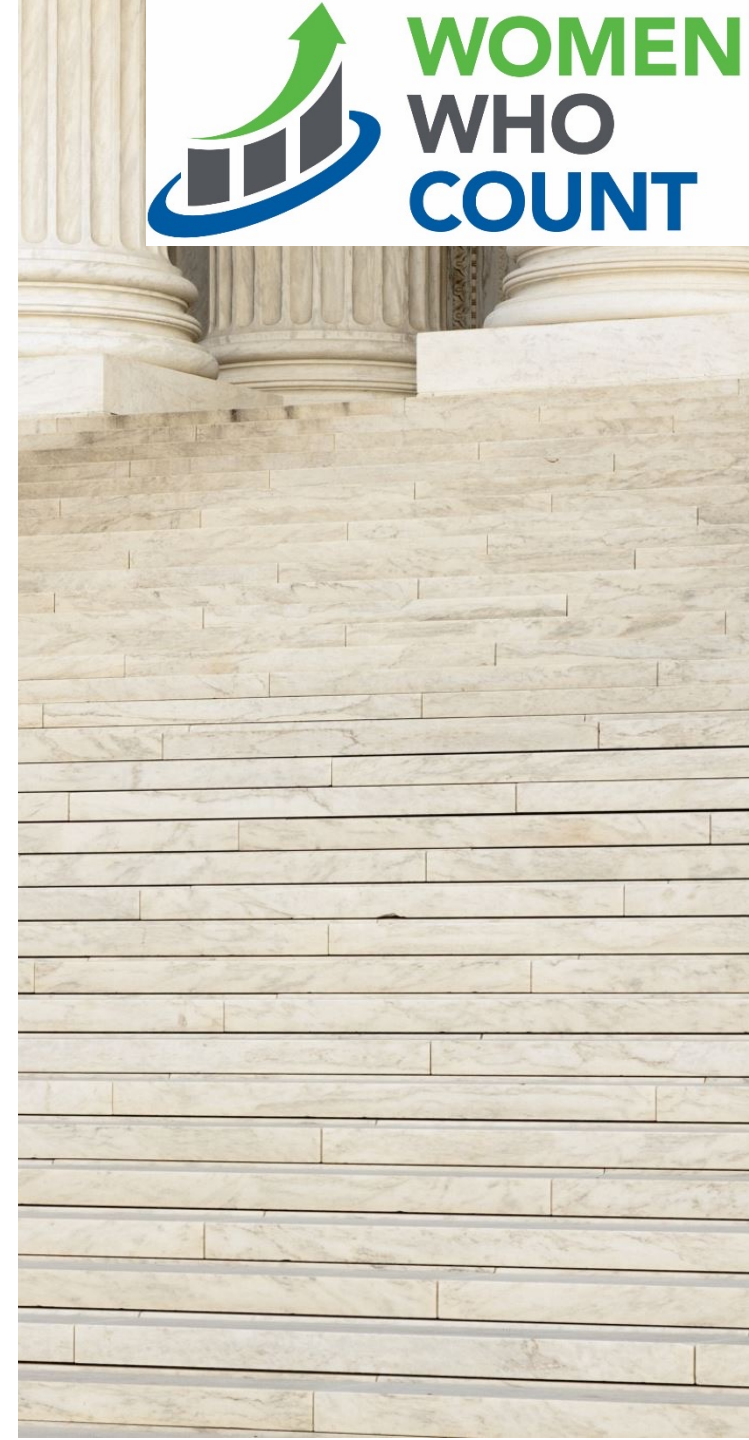
THE BEGINNING  
OF THE STORY...



# INDEPENDENCE

Independence means that the accountant is not unduly influenced by his or her client

An independent accountant does not subordinate his or her judgment to the client's judgment





# THREATS TO INDEPENDENCE

“Threats” are “relationships or circumstances that could compromise a member’s compliance with the rules.”  
(1.100.010.06-.08)

Many threats fall into one or more of these categories:

- adverse interest,
- advocacy,
- familiarity,
- management participation,
- self-interest,
- self-review,
- and undue influence.



# CHALLENGES OF INDEPENDENCE

- Client has an aggressive or dominant personality
- Client has knowledge of Internal Revenue Code and ideas about how to report things
- Accountant relies extensively on revenue from a single client
- Accountant has long-standing, close relationship with client, making the Accountant overly sympathetic to client's interests



# OBJECTIVITY & INDEPENDENCE

*Important to understand situations that compromise your relationship with the client:*

Becoming an "insider" to client and/or the business

Holding a corporate title and being introduced inside and outside the organization as staff (example: CFO or Controller)

Having a client email address with your name and using that email

Participating in client events as if you are staff or traveling for the client as staff

Investing in client's business or ventures

Making your client's favorite charities your charities



# DOCUMENTATION

Protect yourself:

- All documents must come from client or their organization
- Get all direction and information in writing
- Notify the client in writing if you encounter errors that the client is making in entries or documentation.
- Never create a document even if pressured by client or an advisor to the client, such as lawyer or staff
- Never alter (for example, back date) documents
- Do not assume that you know the law and prepare legal documents for the client



# TIME FOR AN ENGAGEMENT CHECKUP LONG-TERM CLIENTS...

## Benefit to Continuity

- Accountant knowing the client & client's business keeps costs low for the client.
- Streamline workflow
- Less time wasted importing new data, depreciation schedules, etc.
- Accountant able to easily and cost effectively respond to IRS requests for information from prior years

## Detriment to Continuity

- Overly familiar relationship with client
- Does not ask why often enough
- Makes assumptions



# CONFLICT CHECKS

Best practices (and most malpractice insurance policies) require conflicts checks to be done at the beginning of every engagement.

What about after the engagement has been active?  
Active for many years?

Over the life of an engagement, the accountant should perform conflicts checks to ensure that no conflicts of interest have arisen.



# REPRESENTATION RULES TO PRACTICE BY

Do not let the client make you the "front person" for them during critical meetings.

Never infer that you know what the client wants.

Never lie or make misleading statements during any audit, but especially a tax audit.

Resist the urge to "help" the client with potential criminal tax issues, you are not a lawyer or a criminal specialist.

# LAPSE IN JUDGMENT - *U.S. V. BERNARD TURK*

Bernard Turk, 73-year-old CPA from the San Fernando Valley, CA.

In February 2021, Turk helped a long-time client submit a false application for a PPP loan on behalf of the client's company.

Prepared false federal corporate income tax returns claiming the business had 126 paid employees. The false return was provided to the bank to obtain the loan. To hide his involvement, he marked the return self-prepared.

He admitted the business had no employees, paid no wages and filed no return with the IRS.

Not sentenced yet.

(Central District of California, July 2022)





# RISKS FOR SOLE PRACTITIONERS

A sole practitioner does not have a structure or organization in place to identify risks

Sole practitioners are always trying to expand services with existing clients

Be honest with yourself as to what services you are qualified to perform

Keep a list of trusted advisors for yourself to consult with in questionable situations

Keep a list of professional referral specialists



*“If a member is unable to gain sufficient competence, the member should suggest, in fairness to the client and public, the engagement of a competent person to perform the needed professional service, either independently or as an associate.” (1.300.010.04)*

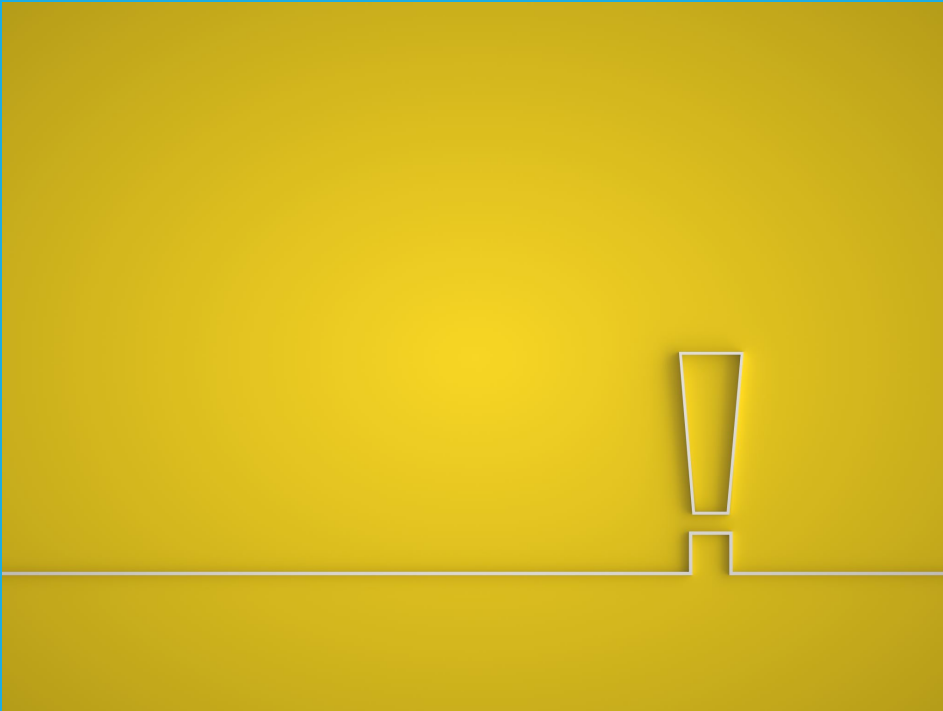
Competence means that the Accountant has the appropriate technical qualifications to perform professional services.

Competence can be gained through research and/or consulting with others.

Are you up to the task at hand?

- Ability to identify issues and options for resolution

# DUE DILIGENCE



A practitioner “must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.” (Cir. 230, § 10.34(d))

# LAPSE IN JUDGMENT - *U.S. V. MARC BERGER*

Marc Berger, CPA, had a 45-year career and was chairman of the board at the mid-size accounting firm of Burr Pilger Mayer.

Berger sentenced to 8 months in prison after conviction in a 3-week jury trial for aiding and assisting in filing false tax returns in violation of I.R.C. § 7206(2).

Government Sentencing Memo asked for a significant jail term, arguing *“it is likely that CPAs across the United States are committing similar crimes for their clients because they know the IRS has very limited resources.”*

(Northern District of California, December 2018)



# COMMUNICATING WITH CLIENTS DURING AN IRS EXAM

When a client receives notification of an IRS Exam, it is often one of the most terrifying moments they have experienced.

- Am I going to jail?
- How much money will this cost me?

Your response should be:

- Immediate
- Measured
- Realistic



# COMMUNICATING WITH CLIENTS DURING AN IRS EXAM

What are your client's goals and how can they be accomplished?

- Speedy resolution
- Low-cost resolution
- Low-stress resolution
- Win at all costs

What are the other possible issues you should be aware of?

- Marital stress
- Monetary stress
- Failure to disclose information during return prep

# BEST PRACTICES FOR CLIENT COMMUNICATIONS

## No guaranty

- Do not guaranty results, either in tax return prep or in exam.

## Avoid

- Avoid accepting responsibility for the tax due or at issue.
- The tax is the tax and we must take care not to pretend like a preparer's job or duty is to reduce or eliminate tax.

## Assess

- Honestly assess whether penalties are at stake and if so, what the implications are.



# DILIGENCE AS TO ACCURACY — IN PRACTICE

Gather facts from the IRS

1. Request and Review IRS documents to understand what IRS position is
2. Account transcripts for year at issue & 5 years prior
3. Wage & Income information for year at issue





# DILIGENCE AS TO ACCURACY — IN PRACTICE

**Compare the results  
to spot and resolve  
any inconsistencies  
with the client.**

**Testing is key.**

# KNOWLEDGE OF CLIENT'S ERROR OR OMISSION

If you know of or discover an error or omission from any return or other tax-related document submitted to the IRS, you:

- Must advise the client of the nature of the error or omission
- Must advise the client of the potential consequences of the error or omission under Code or Regulations

Consider whether an attorney needs to take over to provide attorney-client privilege.

Determine all possible consequences for client under scenarios that include disclosure, no disclosure and “get caught”, no disclosure and “don’t get caught”. Include civil and, if applicable, criminal penalties.

Are you able to continue the representation if the client does not want to disclose?  
Make sure your client understands.

# THINKING PROACTIVELY ABOUT RISK



## Consider

Consider statute of limitations and impact of adequate disclosure



## Evaluate

Evaluate merits of uncertain positions considering current law and knowledge of relevant facts

- Quantify tax exposure attributable to each item



## Assess

Assess additional exposures

- Identify any conduct that the IRS may uncover that could expose the client to criminal liability, significant civil liability, or personal strife
- Estimate penalties & interest

# EGGSHELL AUDITS

If your initial review of the facts revealed potential criminal exposure or other significant liability

or

If the auditor's questions raise red flags

or

If the client reveals bad facts at any point,

then

You are in an “eggshell” audit and must practice the art of fulfilling your professional and ethical obligations while minimizing your client’s exposure.



# CRIMINAL IMPLICATIONS

# FRAUD REFERRAL PROGRAM

IRS Civil can refer a case for Criminal Investigation review and consideration.

All leads must go through a Fraud Enforcement Advisor (the wall between civil and criminal to avoid Tweek issues)

Badges of Fraud must be present in the referral:

- Altered documents submitted
- Second set of records
- False statements
- Destruction of records
- Concealment of income sources
- Any other conduct to conceal or mislead

# TIMELINE OF CRIMINAL INVESTIGATION

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Receive Fraud Referral – accept or decline

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Open Criminal Investigation – administrative or grand jury

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Special Agents gather evidence  
(subpoena/summons)

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Interview subject, return preparer and other witnesses

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Prosecution report - reviewed by many levels, including Department of Justice Tax Division

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Sent to the U.S. Attorney's Office for charging

# CLOSING THOUGHTS

Thank you!