Managing Ethical Dilemmas for Texas CPAs

Course #4155
Course Material
MANAGING ETHICAL DILEMMAS FOR TEXAS CPAS

BY

ALLISON M. McLEOD, LL.M., CPA
ABOUT THE AUTHOR

Allison M. (Yee) McLeod, LL.M., JD, CPA, is currently a Senior Lecturer at the University of North Texas in Denton, Texas. She received Bachelor of Business Administration and Juris Doctor degrees from Baylor University, and a Master of Legal Letters (LL.M.) degree specializing in Taxation from the Southern Methodist University School of Law. Professor McLeod has also studied British and Art History at the University of Sussex, England.

Prior to joining the UNT faculty in 2010, Professor McLeod held the position of Director of Tax Planning and IRS Audits for Lehigh Hanson North America, a major manufacturer of cement, aggregates and other building materials. Her practice included both federal and international tax planning. Professor McLeod also spent thirteen years specializing in Tax Planning with the JCPenney Corporation, Inc., and two years with Deloitte & Touche in Dallas.

Professor McLeod has been licensed to practice law by the State Bar of Texas since 1992 and has been a Certified Public Accountant since 1993. She is a member of the AICPA and the Dallas Chapter of the Tax Executives Institute.
## TABLE OF CONTENTS

### COURSE OBJECTIVES

### PART ONE: THE FOUNDATION OF ETHICAL THOUGHT 5
- Summary of the Ethical Framework 7
- *Red Flags to Spot Ethical Dilemmas* 8
- Values 8
- The Ethical Cycle 9
- Rationalization: The Enemy of Values 10
  - Eight Rationalizations for Ethical Compromise 11

### PART TWO: ETHICS AND THE CPA: DISPLAYING INTEGRITY, OBJECTIVITY, INDEPENDENCE AND RESPONSIBILITY TO THE PUBLIC 12
- What Makes People Make Bad Decisions? 13
- Values: Integrity and Objectivity 14
  - *Specific Behaviors of High Integrity* 15
- Values: Independence 16
- Values: Responsibilities to the Public 18

### PART THREE: RULES OF PROFESSIONAL CONDUCT 24
- Responsibilities to Clients 26
- Responsibilities to the Board / Profession 32

### END NOTES 37
COURSE OBJECTIVES

1. To educate licensees in ethics of professional accounting as Texas CPAs.

2. To convey the intent of the Rules of Professional Conduct in the performance of professional accounting services/work, not to simply adhere to the mere technical compliance of such rules.

3. To assist the Texas CPA in applying ethical judgment in interpreting the rules and determining public interest. Public interest should be placed ahead of self-interest, even if it means a loss of job or client.

4. To review and discuss the Rules of Professional Conduct and their implications for persons in a variety of practices, including:
   a. CPAs in client practice of public accountancy who perform attest and non-attest services per § 501.52.
   b. CPAs employed in industry who provide internal accounting and auditing services.
   c. CPAs employed in education or in government accounting or auditing.
PART ONE: THE FOUNDATION OF ETHICAL THOUGHT

What are ethics? Ethics can be defined as:

“The values an individual uses to interpret whether any particular action or behavior is considered acceptable and appropriate.”

A brief overview of the different schools of ethical thought may help one in determining an individual’s highest values.

There are a number of attendant theories that have been developed over the centuries by renowned philosophers. Some of the major schools of thought are as follows: 1) teleological; 2) deontological; and 3) the so-called “mixed” frameworks. These, in layman's terms, can be summarized as Ends, Actions and Agents.

ENDS

In the teleological school of thought, what is ethical is judged by whether an individual is pursuing and achieving worthy ends, such as a fulfilling and meaningful life, contributing to the health and happiness to those around them, and other goals such as prosperity, security and justice. These pursuits are also known as consequentialism, which focuses on the ends or goals we seek and which are accomplished through our actions.

The teleological camp focuses on the results of the conduct of the individual. There are three subsets within teleology. First, there is ethical egoism, which states that self-interest can play a role in making decisions as long as there are positive benefits for others – essentially espousing a “win-win” situation for others. Second is utilitarianism, which holds that any action of an individual will be based on providing the greatest good for the greatest number or people. This movement was made popular by the writings of Jeremy Bentham and John Stuart Mill. In other words, the principle of utility is where each person’s actions add to the overall utility of the community impacted by those actions. Utilitarians should focus on the net result of their actions instead of the means or motives that generated the reason for their actions. Finally, there is a dualistic approach that straddles the previous two subsets. The dualistic approach promulgated by Henry Sidgwick basically states that an individual uses a cost-benefit analysis in determining his/her action. While seeking the greatest good for the greatest number of people (utilitarianism) is a worthy goal, it has to be tempered with self-interest since it would not be logical for an individual to sacrifice his/her own happiness to help others.

It appears that the teleological view judges the results of an action, not the motive. In this case, it could be argued that any means can be justified as long as the ends are worthy.
CASE STUDY 1: Going Grocery Shopping

When Hurricane Katrina hit New Orleans in 2005, many people were stranded without food and water while waiting to be rescued. Some people in their desperation broke into grocery stores and took provisions to feed themselves and their family. One could say that the means, taking things that didn’t belong to you (e.g., stealing) are not justified by the ends (use of the food and water) since the generalization test is violated because there would be total chaos if everybody took things that didn’t belong to them. However, it can be argued that in another sense, the generalization test is actually met since the reason why these people took the provisions is not because they wanted to steal, but because they wanted to keep their family members from starving. It could further be held that the person didn’t have the intention to steal at all but was merely borrowing the provisions due to the exigent circumstances. Therefore, the generalization test is met since people in similar situations would embrace the rationale behind the actions. The utilitarian test is also met since the nourishment brings the family a greater utility (survival) than it would have had the provisions stayed on the shelf to eventually spoil. This paradigm of course breaks down if the person’s primary motivation was to avoid additional expense instead of survival.

ACTIONS

This branch of ethical thought focuses on the actions that people take and attempts to determine whether a given act is ethically acceptable irrespective of the consequences it creates.

The deontological framework focuses on duty or obligation to determine whether actions are right or wrong. There are three subsets within deontology: a) existentialism; b) contractarianism; and c) Kant’s ethics. Existentialism is perhaps the most well-known of these theories and was espoused by Friedrich Nietzsche and Jean-Paul Sartre. Existentialists believe that the only person who can determine right and wrong is the person who is faced with making a choice between two or more alternatives. As a result, each individual determines his and her own actions and is ultimately responsible for the consequences of those actions. In this way, individuals are able to equate duty with their actions and therefore be able to develop their own sense of personal virtue. Contractarianism, otherwise known as the social contract theory, is based on the premise that certain duties or responsibilities are associated with being a member of a society. This theory was made most popular by Jean-Jacques Rousseau. The whole idea is that everyone in a society should agree to uphold guided principles that are fair to everyone. Another way of stating this could be the Golden Rule, to treat everyone like you would like to be treated. Immanuel Kant espoused in the third theory, known as Kant’s Ethics, the idea that ethical decisions are based on the free will of the individual. Kant believed in this dualistic view between existentialists and contractarians that an individual should act in a way in which one would expect everyone to act if it were a universal will. Here, the treatment of others is the end, not the means to the end. The focus is on the journey (treatment of others along the way), not on the outcome (the end result).
CASE STUDY 2: Making the Fudge

One day, your boss asks you to “fudge” some numbers on a report that he will be going over with the CFO later that day. The amounts are not that material in comparison to the Company’s revenues, but the falsified numbers could lead to a different outcome on a minor management decision than would otherwise occur with the correct numbers. To say no to your boss could lead to a lukewarm or negative review, and you worry that with the constant lay-offs at your office, you could be considered a prime candidate due to a perception that you might not be a “team player” if you refuse your boss’ request. What should you do? While it appears that your falsifying non-material numbers would be for the benefit of your boss and not for you, in reality, you are the one benefitting because the underlying motive to lie would be to preserve your job or a positive perception from your boss.

AGENTS

Ethics deals with more than right and wrong actions. It also addresses issues of character – the personal traits and qualities that define who we are as human agents. These traits include habits, priorities, and idiosyncrasies.

In the *mixed framework*, W. D. Ross stated that certain circumstances could override a person’s actual duty. For example, it may be permissible to tell a lie based on the circumstances. The seven guiding principles, or intuitions, must be incorporated into the decision making process along with determining what is one’s duty. The guiding principles are as follows: a) fidelity; b) reparation (repairing the consequences for a wrong act); c) gratitude; d) justice; e) beneficence (improving the lives of others); f) self-improvement; and g) non-injury (an individual should not cause harm to others).

The mixed framework offers the view that ethical decisions are not inherently black-or-white. The rightness or wrongness of the action is dependent on the additional circumstances or intuitions. For example, most people would say that lying is unethical. What if the person lying is a soldier captured by the enemy and is being tortured so that he will give up his unit’s position? In this case the principle of beneficence is overriding his duty to tell the truth.

SUMMARY OF THE ETHICAL FRAMEWORK

In studying the various ethical theories espoused over the centuries, it becomes quickly obvious that determining what is “ethical” may not be the same for each person or each circumstance. An individual should adopt his/her own ethical framework from which he or she will derive values. Once these values are established, a person should strive to act in accordance with these values.

Conflict can arise when there is both internal and external pressure to act contrary to the values an individual holds most dear. In some cases, a person is not aware that their values are being compromised.
The following list may be of assistance in showing when someone has or is about to stray from his or her standards.

**Red Flags to Spot Ethical Dilemmas**

1. It is too insignificant a matter for anyone to notice.
2. It is too insignificant a matter for anyone to be hurt by my actions.
3. I am not comfortable with this course of action, but I need to do it to advance my career.
4. Everybody else is doing it, so why should I be the exception?
5. I hope that the relevant party to this decision doesn’t find out what I did.
6. Since I was told what to do, I did it.
7. I am doing this because I don’t want to disappoint a specific person.
8. If I make this decision, I will not have to deal with this specific person again.³

**VALUES**

How does one then identify the values needed in interpreting our actions or behaviors? Authors Peter and Sarah Stanwick raise four questions:

*Four questions to ask in identifying values:*

1. *Is the behavior or action consistent with the overall basic duties of the individual in question?*

2. *Does the behavior or action acknowledge and respect the underlying rights of all the individuals who will be impacted by the action?*

3. *Would the behavior or action be considered the best practice in that specific set of circumstances?*

4. *Does the behavior or action match the overall entrenched beliefs of the individual?*

For Certified Public Accountants, those core values are Integrity, Objectivity, Independence and Responsibility to the Public. These values will be discussed in a later section. Once a person has been able to evaluate which ethical framework to adopt, then this should assist in determining which values are to be held most dear. Then, as one is faced with various decisions through life, each decision can be filtered through the Ethical cycle below.
THE ETHICAL CYCLE

RATIONALIZATION: THE ENEMY OF VALUES

Rationalization is the process of convincing yourself that a decision is fair and defensible, when it merely serves your own interests or offers an easy way out. Rationalizations can undermine one's values and thus ethical behavior.\(^4\)

While there are no fool-proof ways of determining when a person is engaged in rationalization, ethicists have used the following three techniques:

1. **The Publicity Test** – would you want this on the front page of the *Wall Street Journal*?

2. **The Reversibility Test** – if you were in the other persons’ shoes, would you still agree with the decision being made?

3. **The Generalizability Test** – Could you defend your decision using the same reasoning in similar cases?\(^5\)

The CPA will find him- or herself hard-pressed at times to make decisions consistent with the values that he/she holds dear. Outside forces, such as employers, clients and even family or friends may cause pressure to take the most profitable or easiest route. CPAs must honestly assess the motivation underlying their actions and question situations which seem to run afoul of their ethical frameworks.

---

**TAKE-AWAY FOR THE CPA: THE ETHICAL FRAMEWORK**

- Various schools of thought have been developed over the centuries which can aid an individual in determining whether an action would be ethical or not.

- The CPA should determine which of these schools would be helpful in formulating his/her own ethical framework. From this framework, the CPA can establish his/her values.

- The CPA should strive to act in ways that are consistent with these values.

- There is often not a clear-cut answer on whether an action is right or wrong; the CPA often must filter the situation through the ethical framework and values he/she has adopted.
CASE STUDY 3: The “Big Bath”

ABC Company is experiencing a less-than-stellar year and anticipates a large net operating loss by the time the fiscal year comes to a close. In fact, ABC anticipates missing analysts’ earnings estimates by 10%. The business environment appears to be improving though, and management anticipates that they will complete a large sale of product towards the middle of the next fiscal year. The Chief Accounting Officer suggests that it would be better to go ahead and use the current year in which targets have already been missed to increase reserves on aging equipment, accrue expenses, write-off bad debts, etc., all of which normally would have been incurred in the next year. The rationale is that “sandbagging” a bad year with additional negative information will not have any significant additional impact on the stock price. This type of “revenue management” is sometimes known as “the big bath”. In any event, causing what normally would have been next year’s expenses to hit the current fiscal year would create an even more favorable comparison for the following fiscal year, especially in light of the anticipated large sale of inventory. Besides, mused the CAO, some of the accruals would be “legal” based on a strict literal reading of the GAAP rules.

1. What ethical issues can you identify in the scenario above?

2. Are the CAO’s rationalizations justified?

3. Does the fact that the items purportedly will not have a material impact on the stock price influence your answer?

Eight Rationalizations for Ethical Compromise

1. I have to do questionable actions to achieve my objectives.

2. I don’t have the time and/or the resources to follow an ethical course of action.

3. My fellow colleagues expect me to behave in an unethical manner.

4. My boss wants me to produce results, not excuses as to why it can’t be done.

5. I believe that my actions are neither wrong nor illegal.

6. Other people would agree with my decision.

7. No one will be able to identify the difference between my action and a more ethical course of action.

8. I am hesitant to take the right course of action.
PART TWO: ETHICS AND THE CPA: DISPLAYING INTEGRITY, OBJECTIVITY, INDEPENDENCE AND RESPONSIBILITY TO THE PUBLIC

As mentioned above, Certified Public Accountants have established among their core values Integrity, Objectivity, Independence and Responsibility to the Public. The TSBPA Rules of Professional Conduct (“RPC”) give further detail on what that means as it pertains to the profession. The organization of the Rules and certain issues will be highlighted in a later section. In this part, we will discuss in particular the rules associated with core values for the CPA: Integrity, Objectivity, Independence and Responsibility to the Public. How does a CPA and his/her firm live out those values in practice? The following recent story from The Wall Street Journal shows what NOT to do.

ERNST ACCUSED OF LEHMAN WHITEWASH

New York Sues the Accounting Firm, Alleging a 7-year Fraud as it Made $150 Million in Fees

By Liz Rappaport and Michael Rapoport

In the most sweeping allegations against an accounting firm in nearly a decade, New York’s attorney general is accusing accounting giant Ernst & Young of helping Lehman Brothers Holdings Inc. disguise its financial condition …

The lawsuit, led by New York Attorney General Andrew Cuomo, alleges that the firms engaged in practices to temporarily erase as much as $50 billion in Lehman assets. This often occurred near the end of a quarter, allegedly making the company look much healthier than it was.

The accounting maneuver, called Repo 105, was used to shift the assets off Lehman’s books in return for a promise to buy back the securities at a premium days later. Cash received by Lehman immediately was used to pay down other debts.

Ernst “directly facilitated” an accounting sleight of hand that burnished the securities firm’s balance sheet, Mr. Cuomo claimed in the lawsuit …

Lehman’s accounting was in accordance with generally accepted accounting principles, Ernst said, and Lehman’s bankruptcy “was not caused by any accounting issues.”

The 32-page civil-fraud lawsuit depicts a cozy relationship between the big accounting firm and its client. Two of Lehman’s chief financial officers were former Ernst employees during much of the seven-year period when the transactions in question occurred …

The relationship between Lehman and Ernst was profitable – and grew even more lucrative for the accounting firm as Lehman’s business boomed during the years when it issued Repo 105 transactions.

In the decade before its demise, Ernst earned more than $185 million in audit and other fees from Lehman, according to securities filings. In fiscal 2007, the last complete year before Lehman’s bankruptcy, it was Ernst’s eighth biggest U.S. client by audit fees, and it was in Ernst’s top 15 clients in each of the previous seven years …
With fees like that, an audit firm’s partners “get extremely scared to death about losing a major client,” especially in an economic downturn …

The deceit became so entrenched, the suit alleges, that a Lehman executive and an Ernst auditor who expressed concern about Repo 105 transactions were ignored …

Nonetheless, Ernst & Young gave Lehman clean audits without any disclosures about Repo 105.


WHAT MAKES PEOPLE MAKE BAD DECISIONS?

1. They do not feel loyal to the organization.

2. They feel pressure to “succeed,” as defined by the organization.

3. They feel entitled.

4. They believe that the rules do not apply to them.

5. They do not view the act as illegal.

6. They feel pressured by their peers.

7. They lack resources.
VALUES: INTEGRITY AND OBJECTIVITY

RULE §501.73 Integrity and Objectivity

(a) A person in the performance of professional accounting services or professional accounting work shall maintain integrity and objectivity, shall be free of conflicts of interest and shall not knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a person may resolve doubt in favor of his client as long as any tax position taken complies with applicable standards such as those set forth in Circular 230 issued by the Internal Revenue Service and AICPA Statements on Standards for Tax Services.

(b) A conflict of interest may occur if a person performs a professional accounting service or professional accounting work for a client or employer and the person has a relationship with another person, entity, product, or service that could, in the person’s professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the person’s objectivity. If the person believes that the professional accounting service or professional accounting work can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, then this rule shall not operate to prohibit the performance of the professional accounting service or professional accounting work because of a conflict of interest.

(c) Certain professional engagements, such as audits, reviews, and other services, require independence. Independence impairments under §501.70 (relating to Independence), its interpretations and rulings cannot be eliminated by disclosure and consent.

(d) A person shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs independence or objectivity in rendering professional accounting services or professional accounting work, or which is conducted so as to augment or benefit the accounting practice unless these rules are observed in the conduct thereof.

(e) Interpretive Comment: Reference should be made to §501.62(4) and (5) of this title (relating to Other Professional Standards) where applicable.

Source Note: The provisions of this §501.73 adopted to be effective June 11, 2000, 25 TexReg 5338; amended to be effective February 4, 2004, 29 TexReg 963; amended to be effective February 17, 2008, 33 TexReg 1093

Example: Steve, CPA, is a staff accountant in a local CPA firm. His supervisor wants him to capitalize costs that Steve believes the GAAP rules require him to expense. Steve may not subordinate his judgment to his supervisor’s, even if it means the loss of job or client, per §501.73(a).
Example: Joe, a CPA based in Lufkin, Texas has audited for several years the financial statements of a small company in his area. Another corporation has offered to buy out the owners of this company, therefore necessitating the need for a valuation. Joe’s daughter, Susan, happens to be the most qualified valuation expert in East Texas. Joe would have the appearance of a conflict of interest if he recommended Susan’s services to his client unless Joe disclosed the familial relationship and obtains a written consent from his client pursuant to §501.73(b).

Specific Behaviors of High Integrity

Author Donald Zauderer listed thirteen specific behaviors that can help identify the level of integrity in individual actions.

1. **POSSESS HUMILITY** – there is no value added in being arrogant or exaggerating the individual contribution to the success of the firm.

2. **MAINTAIN CONCERN FOR THE GREATER GOOD** – An individual should always make decisions that benefit the firm overall. The individual should never make decisions where the individual’s self-interest supersedes the interests of the client.

3. **BE TRUTHFUL** – An individual should always be truthful not only in his or her statements, but also in his or her actions. An individual should never make untrue statements or take credit for the efforts of others.

4. **FULFILL COMMITMENTS** – An individual should always make a good-faith effort to fulfill all the commitments the individual promised to complete. An individual should never breach an agreement or deliver a required project late or not at all.
5. STRIVE FOR FAIRNESS – An individual should never be biased in decisions, including making judgments without all the relevant documents or assigning employees based on subjective criteria that discriminates against other employees.

6. TAKE RESPONSIBILITY – An individual should always take full responsibility for one’s own actions. An individual should not shift the blame to others or falsely accuse others of actions that are not accurate.

7. HAVE RESPECT FOR THE INDIVIDUAL – An individual should always acknowledge the contributions of others, consider the input of others and not display rude behavior.

8. CELEBRATE THE GOOD FORTUNE OF OTHERS – An individual should not be envious of the success of a colleague, but share in the joy of that person.

9. DEVELOP OTHERS – An individual should make a good-faith effort in helping coach and train others and give effective, constructive performance evaluations of his or her subordinates.

10. REPROACH UNJUST ACTS – An individual should refuse to perform any act that he or she would consider to be unjust. In addition, the individual should stand up to defend his or her principles.

11. BE FORGIVING – An individual must let go of the previous ill will and release any grudges that may have developed between the individual and others within the organization.

12. EXTEND SELF FOR OTHERS – An individual must help and provide assistance to others in a time of need. In addition, an individual must be generous with rewards to others when it is warranted.

13. MAKE YOUR ETHICAL BEHAVIOR CONSISTENT BETWEEN YOUR PERSONAL AND PROFESSIONAL LIFE – Don’t compartmentalize.

INTEGRITY = ACTING IN LINE WITH YOUR BELIEFS!
VALUES: INDEPENDENCE

RULE §501.70 Independence

A person in the performance of professional accounting services or professional accounting work, including those who are not members of the AICPA, shall conform in fact and in appearance to the independence standards established by the AICPA and the board, and, where applicable, the U.S. Securities and Exchange Commission, the General Accounting Office, the PCAOB and other national or international regulatory or professional standard setting bodies.

Source Note: The provisions of this §501.70 adopted to be effective June 11, 2000, 25 TexReg 5337; amended to be effective February 15, 2001, 26 TexReg 1340; amended to be effective April 3, 2002, 27 TexReg 2436; amended to be effective February 17, 2008, 33 TexReg 1092

TAKE-AWAY FOR THE CPA: INDEPENDENCE

✓ The CPA must exercise independent judgment both in fact and in appearance.

✓ It can be challenging to maintain independence in fact when faced with communicating an accounting issue that may be contrary to the client's desired outcome. The CPA could be threatened with the choice of “caving” or losing the engagement.

✓ While a CPA may have achieved independence in fact, he/she must still consider whether he/she also has the outward appearance of independence in order to meet the §501.70 standards. For example, a practitioner who performs a major engagement for a public company may want to refrain from enthusiastically recommending that company as a good investment to others even though the statements are true since the CPA would benefit from the continued success of that public company.

✓ A good filter to determine if a CPA’s action would show independence in appearance is to use the Publicity Test as discussed in the Rationalization Section earlier: would you want this on the front page of the Wall Street Journal?
CASE STUDY 4: The Absent-Minded Client

You have an individual client for whom you prepare her Form 1040 more as a favor than anything else, although you do charge her a fee (albeit far below market) for your services. She is a single mom whose income is around $40,000. This client is good-natured but somewhat disorganized and sometimes forgets to give you relevant tax data despite your best efforts to ask for the documentation. You try to be patient with this client, knowing that organization and/or business matters are not her strong suit. One particular year, you have had to rerun her tax return twice due to the fact that after you sent her what you thought was the final copy, she “remembered” something else that she forgot to tell you that impacted the return. You have just sent her the third and hopefully final copy. Due to all the extra time spent on revisions, your rate of pay is probably below minimum wage. The client calls you a few days later and says that she had just remembered that she had privately sold during the tax year in question an article of jewelry she had inherited from her grandmother several years ago. The basis established by the estate during probate was $1,000. This client cannot afford (due to a large number of medical bills incurred recently) to pay you any extra fees. Your patience is wearing thin! What should you do? Would your answer change if the jewelry had been sold for $250?

VALUES: RESPONSIBILITIES TO THE PUBLIC

Any individual holding a Texas CPA license has not only a privilege but an attendant responsibility to investors, clients, governmental authorities, or anyone who relies on the veracity of the work done by the CPA. A CPA designation should and does mean something. As a result, the RPC espouses the following rules in order to protect the public against the unauthorized, incompetent, or misleading practice of public accountancy.

RULE §501.81 Firm License Requirements

(a) A Firm, may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by the board or qualifies under a practice privilege.
(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.
(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs:
   (1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;
   (2) an examination of prospective financial information that is to be performed in accordance with the Statement on Standards of Attestation Engagements; or
   (3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.
(d) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(f) On the determination by the board that a person has practiced without a license or through an unlicensed firm in violation of subsection (d) of this section, the person's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

Source Note: The provisions of this §501.81 adopted to be effective June 11, 2000, 25 TexReg 5339; amended to be effective December 6, 2001, 26 TexReg 9859; amended to be effective April 3, 2002, 27 TexReg 2437; amended to be effective February 4, 2004, 29 TexReg 964; amended to be effective February 17, 2008, 33 TexReg 1096

Example: Sanjay, an Arkansas CPA, sets up a small shop in Mount Vernon, Texas. His sign reads, “Sanjay Jones, CPA – Attest Specialist”. Sanjay may not refer to himself as a CPA or offer attest services since he does not have a Texas CPA license.

Assume that Sanjay is a Texas CPA but works for a tax controversy firm that serves the general public. Sanjay’s employer does not have a firm license from the TSBPA. Sanjay will have to provide the prominent disclaimer “This is not a CPA Firm” in any advertising or written statement.

RULE §501.82 Advertising

(a) A person shall not use or participate in the use of:

(1) any written, oral, or electronic communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim; nor

(2) any written, oral or electronic communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(c) It is a violation of these rules for a person to persist in contacting a prospective client when the prospective client has made known to the person, or the person should have known the prospective client's desire not to be contacted by the person.

(d) In the case of an electronic or direct mail communication, the person shall retain a copy of the actual communication along with a list or other description of parties to whom the communication was distributed. Such copy shall be retained by the person for a period of at least 36 months from the date of its last distribution.
(e) Subsection (d) of this section does not apply to anyone when:
(1) the communication is made to anyone who is at that time a client of the person;
(2) the communication is invited by anyone to whom it was made; or
(3) the communication is made to anyone seeking to secure the performance of professional services.
(f) In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.

Source Note: The provisions of this §501.82 adopted to be effective June 11, 2000, 25 TexReg 5340; amended to be effective February 17, 2008, 33 TexReg 1096; amended to be effective June 17, 2009, 34 TexReg 3947

RULE §501.83 Firm Names

(a) General Rules Applicable to all Firms:
(1) A firm name may not contain words, abbreviations or other language that are misleading to the public, or that may cause confusion to the public as to the legal form or ownership of the firm.
(2) A firm licensed by the board may not conduct business, perform or offer to perform services for or provide products to a client under a name other than the name in which the firm is licensed.
(3) A word, abbreviation or other language is presumed to be misleading if it:
(A) is a trade name or assumed name that does not comply with paragraph (4)(A) or (B) of this subsection;
(B) states or implies the quality of services offered, special expertise, expectation as to outcomes or favorable results, or geographic area of service;
(C) includes the name of a non-owner of the firm;
(D) includes the name of a non-CPA, except as provided in paragraph (4)(B) of this subsection;
(E) states or implies educational or professional attainment not supported in fact;
(F) states or implies licensing recognition for the firm or any of its owners not supported in fact; or
(G) includes a designation such as "and company," "company," "associates," "and associates," "group" or abbreviations thereof or similar designations implying that the firm has more than one employed licensee unless there are at least two employed licensees involved in the practice. Independent contractors are not considered employees under this subsection.
(4) A word, abbreviation or other language is presumed not misleading if it:
(A) is the name, surname, or initials of one or more current or former CPA owners of the firm, its predecessor firm or successor firm;
(B) is the name, surname, or initials of one or more current or former foreign practitioner owners of the firm, its predecessor firm or successor firm who are or would have been eligible to practice public accountancy in this state under §513.2 of this title (relating to Application for Registration of Foreign Practitioners);
(C) indicates the legal organization of the firm, or;
(D) states or implies a limitation on the type of service offered by the firm, such as "tax," "audit" or "investment advisory services," provided the firm in fact principally limits its practice to the type of service indicated in the name.
(5) The board may place conditions on the licensing of a firm in order to ensure compliance with the provisions of this section.
(b) Additional Requirements Based on Legal Form or Ownership.

(1) The names of a corporation, professional corporation, limited liability partnership, professional limited liability company or other similar legal forms of ownership must contain the form of ownership or an abbreviation thereof, such as "Inc.," "P.C.," "L.L.P." or "P.L.L.C."
except that a limited liability partnership organized before September 1, 1993 is not required to utilize the words "limited liability partnership" or any abbreviation thereof.

(2) Sole Proprietorships:

(A) The name of a firm that is a sole proprietor must contain the surname of the sole proprietor as it appears on the individual license issued to the sole proprietor by the board.

(B) A partner surviving the death of all other partners may continue to practice under the partnership name for up to two years after becoming a sole proprietor, notwithstanding subsection (d) of this section.

(c) The name of any current or former owner may not be used in a firm name during any period when such owner is prohibited from practicing public accountancy and prohibited from using the title "certified public accountant," "public accountant" or any abbreviation thereof, unless specifically permitted by the board.

(d) A firm licensed by the board is required to report to the board any change in the legal organization of the firm and amend the firm name to comply with this section regarding firm names for the new organization within thirty days of the effective date of such change.

(e) This section regarding firm names does not affect firms licensed by the board prior to the effective date of this section, but does apply to any change in legal organization or name that occurs after the effective date of this section. Nothing in this subsection prohibits the board from placing conditions on the licensing of a firm pursuant to subsection (a)(5) of this section at the time of renewal of the firm license.

Source Note: The provisions of this §501.83 adopted to be effective October 13, 2005, 30 TexReg 6432

Example: Jeffrey Smith, CPA, formed an LLC through which he is in the client practice of public accountancy as a sole proprietor. Jeffrey cannot name his firm “Smith and Company” or “The Smith Group” unless there are at least two CPAs practicing in his firm. Jeffrey will need to show in the firm title that his business is an LLC. One example of a correct designation would be “Jeffrey Smith, CPA – A Limited Liability Company.”
RULE §501.85 Complaint Notice

When a firm receives a complaint that an alleged violation of the Act or Rules of Professional Conduct has occurred, a person shall provide to the complainant a statement that: Complaints concerning Certified Public Accountants may be addressed in writing to the Texas State Board of Public Accountancy at 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900, telephone (512) 305-7800, e-mail to enforcement@tsbpa.state.tx.us, or fax (512) 305-7854.

Source Note: The provisions of this §501.85 adopted to be effective February 15, 2001, 26 TexReg 1341; amended to be effective February 4, 2004, 29 TexReg 964; amended to be effective February 17, 2008, 33 TexReg 1097

RULE §501.86 Disclosure of Subsequently Discovered Facts

If subsequent to the date of the report upon audited financial statements the licensee becomes aware that facts may have existed at that date which might have affected the report had he been aware of such facts, the licensee must investigate this new information in accordance with the standards established in AICPA Professional Standards AU Section 561 and follow its requirements, including disclosure, as necessary.

Source Note: The provisions of this §501.86 adopted to be effective June 17, 2009, 34 TexReg 3947

Example: Deborah, a CPA based in Midland, TX, audited the financial statements of one of her clients. She subsequently issued a clear opinion. However, a few months later, she discovered that the CFO had been improperly booking revenue as earned during the audited periods when in fact the income was unearned during this time. Deborah is required to disclose the incorrect revenue treatment even though the best information she had at the time had permitted her to initially support the clear opinion.
TAKE-AWAY FOR THE CPA: RESPONSIBILITY TO THE PUBLIC

✓ A firm cannot use the term CPA or a variation thereof unless it has a firm license issued by the Board.

✓ If a Texas CPA works for an unlicensed firm in the client practice of public accounting, he/she must prominently display the disclaimer “this firm is not a CPA firm.”

✓ Any advertising cannot be false, misleading, coercive, or threatening. In addition, a Texas CPA cannot contact individuals who have indicated they do not wish to be approached.

✓ Texas CPA firm names cannot be misleading or use “and Associates” or “and Company”, etc. unless there is actually more than one licensee practicing in the firm.

✓ A firm can use the name of a former partner as long as the firm has not actually become a sole proprietorship. In these cases, the practitioner has two years to delete the name of the former partner and ensure his/her surname has been added.

✓ A Texas CPA must furnish the address and phone number of the TSBPA if someone has indicated they have a complaint to be lodged against the CPA.

✓ If a Texas CPA has determined subsequent to issuing financial reports that facts existed at the time of the issuance that might have had an impact on the same, the CPA must make disclosures as to these facts.
PART THREE: RULES OF PROFESSIONAL CONDUCT

The Rules of Professional Conduct (RPC), which govern the behavior of Texas CPAs, can be found in the Texas Administrative Code in Title 22, Part 22, Chapter 501. The purpose of the RPC is to “establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the [Public Accountancy] Act and the best interest of the public.”

Because the public and the business community rely on the reports and other services of accountants, earning and utilizing the designation of Certified Public Accountant imposes upon the licensee certain duties to the public, including but not limited to the following obligations:

- Maintaining independence in fact and in appearance
- Continuously improving professional skills
- Holding the affairs of clients in confidence
- Maintaining high standards of personal and professional conduct in all matters
- Refraining from committing acts discreditable to the profession.

The RPC applies to all kinds of professional services performed in the practice of public accountancy, including services relating to:

1. accounting, auditing and other assurance services,
2. taxation,
3. financial advisory services,
4. litigation support,
5. internal auditing,
6. forensic accounting, and
7. management advice and consultation.

NOTE: Texas CPAs who are not engaged in client practice of public accountancy are still bound by the RPC. This includes licensees working in industry who provide internal accounting or auditing services. Also covered are CPAs employed in education or in government in accounting or auditing.
The RPC are divided into 5 subchapters.

<table>
<thead>
<tr>
<th>SUBCHAPTER A</th>
<th>GENERAL PROVISIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBCHAPTER B</td>
<td>PROFESSIONAL STANDARDS</td>
</tr>
<tr>
<td>SUBCHAPTER C</td>
<td>RESPONSIBILITIES TO CLIENTS</td>
</tr>
<tr>
<td>SUBCHAPTER D</td>
<td>RESPONSIBILITIES TO THE PUBLIC</td>
</tr>
<tr>
<td>SUBCHAPTER E</td>
<td>RESPONSIBILITIES TO THE BOARD/PROFESSION</td>
</tr>
</tbody>
</table>

Each Subchapter is divided up into a number of rules. Selected provisions of the RPC will be discussed below.

**RULE §501.60 Auditing Standards**

A person shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an auditor with respect to such financial statements, unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the United States General Accounting Office, Public Company Accounting Oversight Board, and in other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements must be justified.

**Source Note:** The provisions of this §501.60 adopted to be effective June 11, 2000, 25 TexReg 5336; amended to be effective February 17, 2008, 33 TexReg 1091

**NOTE:** CPAs in the client practice of public accountancy performing certain attest functions can also fall within this provision. Section 501.52(4) defines “attest service” as an audit, review, compilation, attestation engagement or any other assurance service, all of which must be performed in accordance with standards adopted by the AICPA or any other national or international accountancy organization recognized by the Board.

**TAKE-AWAY FOR THE CPA: AUDITING STANDARDS AND FINANCIAL STATEMENTS**

- A CPA cannot sign off as the auditor for financial statements unless he or she can verify that GAAP has been followed.
- In addition, auditors must also satisfy AICPA, USGAO, and PCAOB standards.
- CPAs performing certain attest functions will also be required to satisfy these standards.
RESPONSIBILITIES TO CLIENTS

RULE §501.71 Receipt of Commissions and Other Compensation

(a) A person shall not for a commission recommend or refer to a client any product or service or refer any product or service to be supplied to a client, or receive a commission, when the person also performs services for that client requiring independence under §501.70 of this chapter (relating to Independence).

(b) This prohibition applies during the period in which the person is engaged to perform any of the services requiring independence and during the period covered by any of the historical financial statements involved in such services requiring independence.

(c) A person who receives or agrees to receive, pays or agrees to pay, other compensation with respect to services or products recommended, referred, or sold by him shall, no later than the making of such recommendation, referral, or sale, disclose in writing the nature, source, and amount, or an estimate of the amount when the amount is not known, of all such other compensation.

(d) The disclosure shall be made regardless of the amount of other compensation involved.

(e) This section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments.

Source Note: The provisions of this §501.71 adopted to be effective June 11, 2000, 25 TexReg 5337; amended to be effective February 4, 2004, 29 TexReg 963; amended to be effective February 17, 2008, 33 TexReg 1092; amended to be effective April 15, 2009, 34 TexReg 2379

RULE §501.72 Contingency Fees

(a) A person shall not perform for a contingent fee any professional accounting services or professional accounting work for, or receive such a fee from, a client for whom the person performs professional accounting services or professional accounting work requiring independence under §501.70 of this chapter (relating to Independence).

(b) A person shall not prepare an original or amended federal, state, local or other jurisdiction tax return for a contingent fee for any client during the period in which the person is engaged to perform any of the services referenced by subsection (a) of this section and the period covered by any historical or prospective financial statements involved in any of the referenced services. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority.

(c) A person shall not perform an engagement as a testifying accounting expert for a contingent fee. A testifying accounting expert is one that at any time during the proceeding becomes subject to disclosure and discovery under the procedural rules of the forum where the matter for which his services were engaged is pending.

(d) The prohibitions outlined in subsections (a) and (b) of this section apply during any period in which the person is engaged to perform any of the services referenced by subsections (a) and (b) of this section, and the period covered by any historical or prospective financial statements involved in any of the referenced services.
(e) Interpretive Comment: A consulting accounting expert may become a testifying accounting expert when the client for whom he is working makes his work available to a testifying expert. A consulting accounting expert who is working on a contingent fee basis should work closely with his client to ensure that he does not inadvertently become a testifying expert through the actions of his client. An accounting expert may not accept a contingent fee for part of an engagement and a set fee for part of the same engagement. A consulting accounting expert who becomes a testifying expert may not accept a contingent fee for the part of his work done as a consultant, but must be compensated on a set fee basis for all of the work performed on the same engagement. A consulting accounting expert who enters into a contingent fee engagement should reach an agreement, preferably in writing, with the client as to how he will be compensated should he become a testifying expert prior to beginning the engagement.

Source Note: The provisions of this §501.72 adopted to be effective June 11, 2000, 25 TexReg 5338; amended to be effective April 7, 2004, 29 TexReg 3474; amended to be effective April 13, 2005, 30 TexReg 2067; amended to be effective October 13, 2005, 30 TexReg 6432; amended to be effective February 17, 2008, 33 TexReg 1093

NOTE: This rule has been interpreted in recent years to mean that if a CPA firm provides audit services for a client, then the firm will not be able to accept a contingency fee arrangement for other services, such as filing amended tax returns.

RULE §501.74 Competence

(a) A person shall not undertake any engagement for the performance of professional accounting services or professional accounting work which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with §501.60 of this title (relating to Auditing Standards), §501.61 of this title (relating to Accounting Principles), and §501.62 of this title (relating to Other Professional Standards).

(1) Competence to perform professional accounting services or professional accounting work involves both the technical qualifications of the person and the person’s staff and the ability to supervise and evaluate the quality of the work being performed.

(2) If a person is unable to gain sufficient competence to perform professional accounting services or professional accounting work, the person shall suggest to the client the engagement of someone competent to perform the needed professional accounting or professional accounting work service, either independently or as an associate.

(b) A person shall exercise due professional care in the performance of professional services.

(c) A person shall adequately plan and supervise the performance of professional services.

(d) A person shall obtain and maintain appropriate documentation to afford a reasonable basis for conclusions and recommendations in relation to any professional services performed.

(e) Interpretive comment: The person may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services.

Source Note: The provisions of this §501.74 adopted to be effective June 11, 2000, 25 TexReg 5338; amended to be effective February 17, 2008, 33 TexReg 1093
Example: Rodney is a partner in a CPA firm located in El Paso, TX. He specializes in audits and attest services. Rodney’s client would like him to assist in a litigation support project. Rodney does not have the knowledge and training to perform the work. He must decline or refer the client to another CPA unless he is able to obtain the necessary information during the engagement or he works with others who are competent to complete the project.

RULE §501.75 Confidential Client Communication

Except by permission of the client or the authorized representatives of the client, a person or any partner, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures pursuant to a court order signed by a judge, a congressional or grand jury subpoena, investigations or proceedings under the Act, ethical investigations conducted by private professional organizations, or in the course of peer reviews.

Source Note: The provisions of this §501.75 adopted to be effective June 11, 2000, 25 TexReg 5338; amended to be effective February 4, 2004, 29 TexReg 963; amended to be effective February 17, 2008, 33 TexReg 1094; amended to be effective June 11, 2008, 33 TexReg 4503; amended to be effective January 28, 2009, 34 TexReg 428; amended to be effective October 7, 2009, 34 TexReg 6853

Example: John, CPA, is assisting Emma in allocating marital assets during Emma’s divorce case. John runs into his friend George who happens to be representing Emma’s soon-to-be ex-husband, Frank. John cannot discuss any part of his work on Emma’s account with George or anyone else unless Emma grants him permission to do so. John can discuss Emma’s case without her permission if John is subpoenaed to testify.
RULE §501.76  Records and Work Papers

(a) Upon request, a person shall provide to the client or former client any accounting or other records, belonging to, or obtained from or on behalf of, the client that the person removed from the client's premises or received on behalf of the client. The records and work papers may be provided to the client in either hard copy or other useable form. A person may make and retain copies of such records when they form the basis of work done by him. For a reasonable charge, a person shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(1) a copy of the client's tax return;

(2) a copy of any report or other document previously issued by the person to or for such client provided that furnishing such reports to or for a client or former client would not cause the person to be in violation of the portions of §501.60 of this title (relating to Auditing Standards) concerning subsequent events;

(3) a copy of the person's work papers, to the extent that such work papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

(b) A person, when performing an engagement that is terminated prior to the completion of the engagement, is required to return or furnish the originals of only those records originally obtained by the person from the client.

(c) Work papers developed by a person during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the person for a client, shall be and remain the property of the person who developed the work papers.

(1) Work papers, whether in the form of hard copy or computer readable format, are those documents developed by the person incident to the performance of his engagement which do not result in changes to the client's records or are in part of the records ordinarily maintained by the client.

(2) Analyses of inventory or other accounts as part of the person's selective audit procedures, even when prepared by client personnel at the request of the person, are the person's work papers.

(3) If the analyses described in paragraph (2) of this subsection result in changes to the client's records, the person is required to furnish the details from his work papers in support of the journal entries recording such changes unless the journal entries themselves contain all necessary details.

(d) Work papers include, but are not limited to:

(1) letters of confirmation and representation;

(2) excerpts of company documents;

(3) audit programs;

(4) internal memoranda;

(5) schedules;

(6) flowcharts; and

(7) narratives.

(e) Work papers which constitute client records include, but are not limited to:

(1) documents in lieu of books of original entry such as listings and distributions of cash receipts or cash disbursements;

(2) documents in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar depreciation records;
(3) all adjusting and closing journal entries and supporting details when the supporting details are not fully set forth in the explanation of the journal entry; and
(4) consolidating or combining journal entries and documents and supporting detail in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(f) Documentation or work documents required by professional standards for attest services shall be maintained in paper or electronic format by a person for a period of not less than five years from the date of any report issued in connection with the attest service, unless otherwise required by another regulatory body. Failure to maintain such documentation or work papers constitutes a violation of this section and may be deemed an admission that they do not comply with professional standards.

(g) Interpretive Comment: It is recommended that a person obtain a receipt or other written documentation of the delivery of records to a client.

Source Note: The provisions of this §501.76 adopted to be effective June 11, 2000, 25 TexReg 5339; amended to be effective December 6, 2001, 26 TexReg 9859; amended to be effective February 4, 2004, 29 TexReg 963; amended to be effective February 17, 2008, 33 TexReg 1094; amended to be effective October 15, 2008, 33 TexReg 8512

Example: Henry, CPA, was in the middle of performing an engagement for his client, Fanny, when she terminated the project. Henry is only obligated to return Fanny’s original records and files. He is not obligated to provide to her his work papers.

RULE §501.77 Acting through Others

(a) A person shall not permit others including non-CPA owners and employees, to carry out on his behalf, either with or without compensation, acts, which, if carried out by the person, would place him in violation of these rules of professional conduct.
(b) The board shall consider that the conduct of any non-CPA owner or employee in connection with the business of a licensed firm is the conduct of that licensed firm for the purposes of the rules of professional conduct.

Source Note: The provisions of this §501.77 adopted to be effective June 11, 2000, 25 TexReg 5339; amended to be effective August 15, 2002, 27 TexReg 7120; amended to be effective February 4, 2004, 29 TexReg 963; amended to be effective February 17, 2008, 33 TexReg 1095
TAKE-AWAY FOR THE CPA: RESPONSIBILITIES TO CLIENTS

✓ A Texas CPA may not receive commissions for referring or performing a product or service in a situation where the CPA is also performing other services requiring independence from the client. Anyone properly paying or receiving a commission must disclose that fact promptly in writing to the client.

✓ A licensee may not perform services (including preparation of original or amended tax returns) for a client for a contingent fee in situations where the CPA is performing other services requiring independence from the client.

✓ A CPA cannot accept a contingent fee for testifying as an accounting expert in a court proceeding.

✓ A licensee must possess competence to perform the promised work for the client. If the CPA does not possess or is not able to obtain the necessary competence during the engagement, then he/she must withdraw and suggest another CPA who is competent to do the job.

✓ Engagements performed for a client must be kept confidential unless permission is granted by the client or if disclosure is required by a judicial proceeding, peer review, or certain ethical investigations.

✓ A CPA must return a client’s original documents irrespective of whether the CPA’s fees have been paid. If the engagement has been completed, then the CPA must furnish upon later request of the client a copy of any report, tax return, or in some cases workpapers that have been prepared. If the engagement was not completed, then the CPA is obligated to return only the client’s original documents.

✓ Attest work papers must be kept for at least 5 years.

✓ A licensee cannot have others carry out on his or her behalf actions that would violate the RPC if the licensee had acted.
RESPONSIBILITIES TO THE BOARD / PROFESSION

RULE §501.90 Discreditable Acts

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting;
(2) dishonesty, fraud or gross negligence in the practice of public accountancy;
(3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board;
(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;
(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;
(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;
(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;
(8) knowingly participating in the preparation of a false or misleading financial statement or tax return;
(9) fiscal dishonesty or breach of fiduciary responsibility of any type;
(10) failure to comply with a final order of any state or federal court;
(11) repeated failure to respond to a client's inquiry within a reasonable time without good cause;
(12) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;
(13) giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;
(14) threats of bodily harm or retribution to a client;
(15) public allegations of a lack of mental capacity of a client which cannot be supported in fact;
(16) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:
   (A) by permission of the employer;
   (B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");
   (C) pursuant to:
      (i) a court order signed by a judge; or
      (ii) a summons
   (I) under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments,
   (II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments, or
   (D) in an investigation or proceeding by the board;
   (E) in an ethical investigation conducted by a professional organization of certified public accountants; or
   (F) in the course of a peer review under Section 901.159 of the Public Accountancy Act; or
   (G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.
(17) breaching the terms of an agreed consent order entered by the board or violating any Board Order.
(18) Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Person to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Persons with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

Source Note: The provisions of this §501.90 adopted to be effective June 11, 2000, 25 TexReg 5340; amended to be effective October 16, 2002, 27 TexReg 9573; amended to be effective February 4, 2004, 29 TexReg 964; amended to be effective June 7, 2006, 31 TexReg 4642; amended to be effective February 17, 2008, 33 TexReg 1097; amended to be effective August 17, 2008, 33 TexReg 6372; amended to be effective January 28, 2009, 34 TexReg 429; amended to be effective June 17, 2009, 34 TexReg 3948

Example: Catherine, CPA, was engaged to prepare Henry’s tax return. Despite the fact that she had the client’s information for some period of time, she had not sent Henry his final return or returned his many phone messages and e-mails, even though the final extended deadline had passed. Catherine can be cited by the Board under §501.90(11), with punishment ranging from fines to censure to suspension of license.
(a) A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee has knowledge of these events:

1. the conviction or imposition of deferred adjudication of the licensee of any of the following:
   A. a felony;
   B. a crime of moral turpitude;
   C. any crime of which fraud or dishonesty is an element or that involves alcohol abuse or controlled substances; and
   D. any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary.

2. the cancellation, revocation, or suspension of a certificate, other authority to practice or refusal to renew a certificate or other authority to practice as a certified public accountant or a public accountant, by any state, foreign country or other jurisdiction;

3. the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency or other licensing agency;

4. an unappealable adverse finding in any state or federal court or an agreed settlement in a civil action against the licensee concerning professional accounting services or professional accounting work; or

5. the loss of a professional license from another state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding.

(b) The report required by subsection (a) of this section shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee to report to the board the occurrence of any of the events set forth in subsection (a) of this section either by or against any other licensee.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(e) Interpretive Comment: A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community and further defined in §501.90(18) and §519.7 of this title.

Source Note: The provisions of this §501.91 adopted to be effective June 11, 2000, 25 TexReg 5341; amended to be effective February 4, 2004, 29 TexReg 964; amended to be effective February 17, 2008, 33 TexReg 1098

Example: John Willoughby, CPA, was convicted of fraud after it was found that he forged the signature of his client, Marianne, to an amended tax return and kept the additional refund for himself. John has 30 days to inform the Board of his conviction.
RULE §501.92 Frivolous Complaints

A person who, in writing to the board, accuses another person of violating the rules of the board shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule. A person who makes a complaint against another person that is groundless and brought in bad faith, for the purpose of harassment, or for any other improper purpose shall be in violation of this rule.

Source Note: The provisions of this §501.92 adopted to be effective June 11, 2000, 25 TexReg 5342; amended to be effective February 4, 2004, 29 TexReg 964; amended to be effective February 17, 2008, 33 TexReg 1098

RULE §501.93 Responses

(a) A person shall substantively respond in writing to any communication from the board requesting a response, within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the communication was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number, or e-mail address furnished to the board by the applicant or person. (b) A person shall provide copies of documentation and/or work papers in response to the board's request at no expense to the board within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the request was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number or e-mail address furnished to the board by a person. A person may comply with this subsection by providing the board with original records for the board to duplicate. In such a circumstance, upon request the board will provide an affidavit from the custodian of records documenting custody and control of the records. (c) Failure to timely respond substantively to written communications, or failure to furnish requested documentation and/or work papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant. (d) Each applicant and each person required to be registered with the board under the Act shall notify the board, either in writing or through the board's website, of any and all changes in either such person's mailing address or telephone number and the effective date thereof within 30 days before or after such effective date. (e) Interpretive Comment. This section should be read in conjunction with §519.6 of this title (relating to Subpoenas). (f) Interpretive Comment. In this section, the term board includes board staff.

Source Note: The provisions of this §501.93 adopted to be effective June 11, 2000, 25 TexReg 5342; amended to be effective February 6, 2002, 27 TexReg 748; amended to be effective October 16, 2002, 27 TexReg 9573; amended to be effective February 4, 2004, 29 TexReg 964; amended to be effective August 4, 2004, 29 TexReg 7304; amended to be effective June 1, 2005, 30 TexReg 3100; amended to be effective February 17, 2008, 33 TexReg 1098; amended to be effective August 17, 2008, 33 TexReg 6373
Example: Elliot, CPA, has been contacted by the Board to furnish work papers from select clients for a peer review. Elliot ignores repeatedly the Board’s request. Since he did not respond within 30 days, Elliot is in violation of §501.93(b) and may be considered unfit to serve the public as a professional accountant.

RULE §501.94 Mandatory Continuing Professional Education

Each certificate or registration holder shall comply with the mandatory continuing professional education reporting and the mandatory continuing professional education attendance requirements of Chapter 523 of this title (relating to Mandatory Continuing Professional Education Program). Once an individual's license has been suspended a third time by the board for failing to complete the 120 hours of continuing professional education required by §523.63 of this title (relating to Mandatory CPE Attendance), the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

Source Note: The provisions of this §501.94 adopted to be effective June 11, 2000, 25 TexReg 5342

TAKE-AWAY FOR THE CPA: RESPONSIBILITIES TO BOARD / PROFESSION

- A Texas CPA may not commit acts that are discreditable to the practice of public accountancy. Examples of such acts include committing fraud, being convicted of a felony, criminal conviction which involves the use of drugs or alcohol, knowingly preparing a false financial statement or tax return, or failing to respond to a client in a timely manner. Consequences of committing a discreditable act range from penalties to license revocation.

- The licensee is required to notify the Board within 30 days if the individual is convicted or is granted deferred adjudication of a felony or other crimes, and the loss or suspension of his or her CPA license by another jurisdiction, governmental or regulatory agency.

- The RPC prohibits individuals from making frivolous accusations against other CPAs without following through to prove his or her claims. This rule was designed to keep other CPAs from making groundless claims against their competition.

- A licensee has 30 days to respond to any inquiries from the Board. Any response must be in writing.

- A Texas CPA must fulfill the mandatory CPE requirements of 120 hours in a 3 year period with a minimum of 20 hours in each one year period. A four hour Board-approved Ethics course must be taken every other year.
END NOTES


3 Stanwick and Stanwick, pg. 27, crediting materials adapted from www.refresher.com/lcrbetics.html.

4 Wicks, et. al., pg. 15.

5 Wicks, et. al., pg. 16.

6 Stanwick and Stanwick, pg. 26, crediting material adopted from the Ethics Resource Center.


9 The Texas Public Accountancy Act in these materials is current as of October 15, 2010. Please be aware that the Act is being constantly updated. The latest version can be found on the following website - http://info.sos.state.tx.us/pls/pls/pub/readtac$ext.ViewTAC? tac_view=3&ti=22&pt=22.

10 Texas State Board of Public Accountancy, Rules of Professional Conduct, (Texas State Board of Public Accountancy), § 501.51(a).

11 Texas State Board of Public Accountancy, Rules of Professional Conduct, (Texas State Board of Public Accountancy), § 501.51(b).

12 Texas State Board of Public Accountancy, Rules of Professional Conduct, (Texas State Board of Public Accountancy), § 501.51(e).

13 Texas State Board of Public Accountancy, Rules of Professional Conduct, (Texas State Board of Public Accountancy), § 501.51(e).