

Lisa,

The following are comments from members of our Ethics Committee members relating to the Exposure Draft Omnibus Proposal from the AICPA Professional Ethics Division dated November 25, 2015.

Comment # 1

I am basically in agreement with the ED relating to the Proposed Interpretation “Transfer of Files and Return of Client Records in Sale, Transfer, or Discontinuance of Member’s Practice” except as follows:

I believe that a member that has transferred or sold a practice should notify in writing all clients. I also feel that the member should obtain, in writing, consent to transfer their files and records to a successor firm. However, I believe that if a client does not respond or the member is unable to contact or find that client, that their information should not be transferred. I feel that it is incorrect to presume that a client consents just because the client has not responded within a 90-day period. Situations could occur where a client is unable to respond within that time period. Failure to obtain written consent from a client of a predecessor firm should require that the records and confidential information not be transferred or disclosed to any other member firm, but should be retained in accordance with the predecessor firm’s record retention policy and/or applicable legal or regulatory requirements, whichever is longer.

Section 1.400.205.03 states “A member who acquires all or part of a practice from another person, firm or entity (predecessor firm) should be satisfied that all clients of the predecessor firm subject to the acquisition have been notified of the acquisition and have consented to the member’s continuation of professional services and retention of any client files or records the successor firm retains.

I believe it would be helpful to expand on this notification and provide examples of what the successor firm should do to be “satisfied” that this requirement has been met.

Comment # 2

I am in agreement with the ED relating to the Revised Interpretation “Disclosing Client Information in Connection With a Review or Acquisition of the Member’s Practice.”

Comment # 3

I do not agree with the ED relating to the Explanation for the Proposed Interpretation “Disclosure of a Commission and Referral Fee” due to the following:

I believe that a member that has notified a client, whether orally or in writing has met the requirement as established by the AICPA. I feel that requiring more written documentation just adds requirements and additional work that is not necessarily cost justified. Naturally, documenting items in written form provides better documentation than orally. However, is this additional requirement really deemed necessary because if it is, then one could certainly argue that we should require considerably more disclosures being in writing. Every time a standard implements a new requirement of written documentation, the cost of an engagement increases. This is one situation that I feel does not justify the additional time and money.

Comment # 4

1.400.205, Transfer of Files:

I generally concur with the proposed standard. However, I wonder if it is intended to address circumstances in which the member does not retain ownership or control of the client files, but either becomes an employee of the successor firm or contracts with the successor firm to continue servicing selected clients. If it is intended to address that situation, a statement to that effect might be appropriate. If not, what would the Committee see as the member's responsibility in those circumstances?

Also, the proposal does not address the death of a member, in particular, a sole practitioner. Should such a member make some provision for the transfer of client files from his or her estate, or some provision for maintaining the confidentiality of client records after he or she dies? Should the proposal at least include some guidance to a successor firm who might seek to acquire client records from the deceased member's estate?

Comment # 5

1.700.050 Disclosing Client Information

I concur with the proposal.

Comment # 6

1.520.080 Disclosure of a Commission and Referral Fee

I concur with the proposal. However, I wonder why the same requirement to disclose in writing should not apply to disclosure of a conflict of interest and the related permission. As akin as commissions and referral fees are to conflicts of interest, the rule should be the same in both cases. If we believe that getting things in writing is best practice, why shouldn't we require it?



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