

From: Michael Molder [<mailto:molder@lawandaccounting.com>]

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To: Lisa Snyder <Lisa.Snyder@aicpa-cima.com>

Cc: Barbara Andrews <Barbara.Andrews@aicpa-cima.com>

Subject: Proposed Interpretation re NOCLAR

Good morning. I'm writing to provide some input on potential unintended consequences of certain aspects of the proposed interpretation "Responding to Non-Compliance With Laws and Regulations." I understand that the comment deadline has passed, but that you are still reviewing the matter with the Forensic and Valuation Services Section. I hope that you will consider some points that the FVS Section representatives may not have raised yet in considering an exception from this standard for forensic and valuation engagements.

An email from the Section this morning pointed out the obvious concern -- that many forensic engagements involve work for people who are already accused of a legal or regulatory violation. My concerns are more general.

First, the proposed interpretation requires not only that the member communicate the NOCLAR to management/those charged with governance (collectively, "Management"), but also to document (a) the matter, (b) the results of the member's discussion with Management, (c) Management's response and (d) the actions that the member considered in light of Management's response. I understand the need for and value of this documentation in most circumstances, and again in most circumstances, the member's files are completely confidential. In civil litigation engagements where the member is retained as an expert witness, however, large portions of the member's work product is discoverable by the opposing party. Even though unrelated to the member's primary engagement, mandatory documentation of NOCLAR (and, particularly, Management's response) could provide information to the opposing party that would substantially damage the client's interests.

Second, NOCLAR is often an issue in valuation engagements in marital disputes. I recently worked on a divorce case where both spouses owned businesses that receive a portion of their customer payments in cash with the inevitable failure to disclose some portion of those cash receipts on the respective businesses' tax returns. Unlike the first issue, both parties are well aware of each business' under-reporting and consequent under payment of income and other taxes. I discussed the matter with both business owners and received the same response -- operating imperatives make the cash transactions necessary. They have employees who will only work for unreported compensation. They have vendors who provide substantial

discounts when paid in cash for goods and services. They have absolutely no intention of changing the way they do business (and, by the way, are confident that their competitors do the same). My role as a business valuation professional is to understand and factor these issues into the fair market value of these businesses. The interpretation, however, appears to require a withdrawal since the "non-compliance is likely to recur." An unintended consequence of this interpretation would be to foreclose members from participating in whole swaths of valuation engagements.

Finally, while the interpretation does not require members "to have a level of knowledge of laws and regulations greater than that required to undertake the engagement" there are many members, myself included, who do have a higher degree of legal knowledge. While being both a lawyer and CPA is unusual, it is by no means unique, particularly in forensic and tax services. An unintended consequence of formalizing the investigation and documentation of NOCLAR could be to encourage clients to engage less knowledgeable and less sophisticated practitioners, particularly in forensic and valuation services. Certainly, clients engaged in NOCLAR are the exception not the standard, but that should not mean we, as a profession, want to encourage members to not seek the greatest level of knowledge.

Thank you for your time, and I hope that the PEEC and the FVS Section can craft an exception for forensic and valuation engagements.

Michael J. Molder, JD, CPA/CFP, CFE, CVA/MAFF

AILA Limited

133 Heather Rd., Suite 108
Bala Cynwyd, PA 19004

610-206-3169

molder@LawAndAccounting.com



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