

252 CMR 3.00: CODE OF ETHICS AND RULES OF PROFESSIONAL CONDUCT

Section

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The Code of Ethics and Rules of Professional Conduct derive their authority from M.G.L. c. 112, § 87A½ subsection (4) which provides that the Massachusetts Board of Public Accountancy may make such rules of professional conduct as may be instrumental in fixing and maintaining high standards of integrity and dignity in the profession of public accounting, and for the enforcement of such rules and other statutory requirements.

3.01: Independence, Integrity and Objectivity

(1) Independence. A certified public accountant or a firm of which the licensee is a partner, shareholder or member shall not express an opinion on financial statements of an enterprise unless the licensee or the licensee's firm are independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

(a) During the period of the licensee's professional engagement, or at the time of expressing the licensee's opinion, the licensee or the licensee's firm:

1. Had or was committed to acquire any direct or indirect financial interest in the enterprise;
2. Had any joint closely held business investment with the enterprise or any officer, director, member or principal stockholder; or
3. Had any loan to or from the enterprise or any officer, director, member or principal stockholder thereof. This latter proscription does not apply to the following loans from a financial institution when made under normal lending procedures, terms, and requirements: loans obtained by a member of the licensee's firm which are not material in relation to the net worth of such borrower; home mortgages; other secured loans, except loans guaranteed by member's firm which are otherwise unsecured.

(b) During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion the licensee or the licensee's firm:

1. Was connected with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of any employee; or
2. Was a trustee of any trust or executor or administrator of any estate, if such trust or estate had a direct or indirect financial interest in the enterprise; or was a trustee for any pension or profit-sharing trust of the enterprise.

(2) Integrity and Objectivity. A certified public accountant shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax, management advisory, or other financial services, shall not subordinate his or her judgment to others. In tax practice a certified public accountant may resolve doubt in favor of the licensee's client as long as there is reasonable support for the licensee's position.

3.02: Competence and Technical Standards

(1) Competence. A certified public accountant shall not undertake any engagement which the

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licensee's or the license's firm cannot reasonably expect to complete with professional competence.

(2) Auditing Standards. A certified public accountant shall not permit the licensee's name to be associated with financial statements in such a manner as to imply that the licensee is acting as an independent certified public accountant unless the licensee has complied with applicable generally accepted auditing standards.

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- (3) Accounting Principles. A certified public accountant shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle which has a material effect on the statements taken as a whole, unless the licensee can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.
- (4) Forecasts. A certified public accountant shall not permit the licensee's name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the certified public accountant vouches for the achievability of the forecast.

3.03: Responsibilities to Clients

- (1) Confidential Relationship. A certified public accountant shall not disclose any confidential information obtained in the course of a professional engagement, except with the consent of the client. 252 CMR 3.03 shall not be construed to relieve a person of his obligation to comply with a validly issued subpoena or summons enforceable by order of a court, or to respond to proper inquiries made by the Massachusetts Board of Public Accountancy or in the course of quality reviews of said certified public accountant or the licensee's firm.
- (2) Contingent Fees.
- (a) Contingent Fee means a fee established for the performance of any public accounting service for which no fee will be charged unless a specified finding or result is attained, or for which the amount of the fee is otherwise dependent upon the finding or result of the service. A licensee shall not enter into an oral agreement that provides for a contingent fee for public accounting services.
- (b) A licensee shall not accept or perform any public accounting services for a contingent fee or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:
1. An audit;
  2. A review;
  3. A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or
  4. An examination of prospective financial information.
- (c) The prohibition of 252 CMR 3.03(2)(b) applies during the period of time in which the licensee is engaged to perform those services and the period covered by any historical financial statements involved in those services.
- (d) A licensee in public practice shall not prepare for a contingent fee:
1. An original or amended tax return or claim for a tax refund. Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund; or
  2. An amended federal or state income tax return for a client claiming a refund of taxes because a deduction was inadvertently omitted from the return originally filed when there is no question as to the propriety of the deduction, rather the claim is filed to correct an omission.
- (e) The following are examples of circumstances where a contingent fee would be permitted regardless of whether the licensee or licensee's firm is performing the services specified in

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252 CMR 3.03(2)(b):

1. Representing a client in an examination by a revenue agent of the client's federal or state income tax return;
2. Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is either the subject of a test case by a different taxpayer or with respect to which the taxing authority is developing a position;

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3. Filing an amended federal or state income tax return or refund claim which claims a tax refund in an amount greater than the threshold for review by the Joint Committee on Internal Revenue Taxation (\$1,000,000 at March, 1991) or state taxing authority;
  4. Requesting a refund of either overpayments of interest or penalties charged to a client's account or deposits of taxes improperly accounted for by the federal or state taxing authority in circumstances where the taxing authority has established procedures for the substantive review of such refund requests;
  5. Requesting, by means of protest or similar document, consideration by the state or local taxing authority of a reduction in the assessed value of property under an established taxing authority review process for hearing all taxpayer arguments relating to assessed value; or
  6. Representing a client to obtain a private letter ruling or influencing the drafting of a regulation or statute.
- (f) Fees shall not be considered as contingent:
1. If fixed by courts or other public authorities; or
  2. In tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A fee is considered determined based on the findings of governmental agencies, if the licensee can demonstrate a reasonable expectation at the time of the fee arrangement, of substantive consideration by an agency with respect to the licensee's client. The expectation is deemed not reasonable in the case of preparation of original tax returns.
- (g) Fees may vary depending on the complexity of services rendered.
- (3) Records. In accordance with M.G.L. c. 112, § 87E, a certified public accountant shall furnish to the licensee's client or former client, upon request made within a reasonable time after original issuance of the document in question, if not previously furnished:
- (a) A copy of a tax return of the client;
  - (b) A copy of any report or other document issued by the certified public accountant or public accountant to or for such client;
  - (c) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the certified public accountant removed from the client's premises or received for the client's account, but the certified public accountant may make and retain copies of such documents of the client when they form the basis for work done by the licensee; and
  - (d) A copy of the certified public accountant's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

3.04: Responsibilities to Colleagues

- (1) Combined and/or Consolidated Statements. Where a certified public accountant is required to express an opinion on combined or consolidated financial statements which include a subsidiary, branch or other component audited by another certified public accountant, the licensee may insist on auditing any such component which in the licensee's judgment is necessary to warrant the expression of the licensee's opinion.
- (2) Referral Engagements. A certified public accountant who receives an engagement for services by referral from another certified public accountant shall not accept the client's request to extend the licensee's service beyond the specific engagement without first notifying the referring accountant.

3.05: Other Responsibilities and Practices

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(1) Discreditable Conduct. A certified public accountant shall not commit any act discreditable to the profession.

(2) Solicitation and Advertising.

(a) Advertising. Certified Public Accountants may provide information to the public by advertising. Such advertising shall not:

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1. be false, deceptive or misleading;
  2. create false or unjustified expectations of favorable results;
  3. imply the ability to influence improperly any court tribunal or regulatory agency;
  4. fail to disclose all variables and other relevant factors for soliciting professional engagements; or
  5. violate M.G.L. c. 93A.
- (b) Solicitation. Certified Public Accountants may solicit professional engagements by direct communications. Such communications shall not:
1. be false, deceptive or misleading;
  2. create false or unjustified expectations of favorable results;
  3. imply the ability to influence improperly any court tribunal or regulatory agency;
  4. fail to disclose all variables and other relevant factors for soliciting professional engagements;
  5. violate M.G.L. c. 93A; or
  6. be coercive, intimidating, threatening or overreaching.
- (3) Commissions.
- (a) Commission means any item of value given or received by a licensee to or from any third party in return for suggesting the purchase of any product or service.
- (b) A licensee shall not recommend or refer to a client any product or service in exchange for a commission, recommend any product or service to be supplied by the licensee's client to a third party, or receive a commission when the licensee or the licensee's firm also performs for that client:
1. An audit or review of a financial statement;
  2. A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or
  3. An examination of prospective financial information.
- (c) The prohibition of 252 CMR 3.05(3)(b) applies during the period in which the licensee is engaged to perform any of the services listed in 252 CMR 3.05(3)(b)1. through 3. and the period covered by any historical financial statements involved in the listed services.
- (d) A licensee who is not prohibited from receiving a commission and who is paid or expects to be paid a commission shall disclose that fact, in writing, to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.
- (e) A licensee who accepts a fee for recommending or referring any service of another licensee to any person or entity or who pays a fee to obtain a client shall disclose, in writing, the receipt or payment of the fee to the client.
- (f) 252 CMR 3.05(3) shall not prohibit:
1. Payments for the purchase of an accounting practice; or
  2. Retirement payments to individuals, and their heirs or estates, who were formerly engaged in the practice of public accounting.
- (4) Incompatible Occupations. A certified public accountant who is engaged in the practice of public accounting shall not concurrently engage in any business or occupation which impairs his independence or objectivity in rendering professional services.
- (5) Form of Practice and Name.
- (a) Form of Practice. A certified public accountant may practice public accountancy only in a proprietorship, partnership, professional corporation, business corporation, limited liability partnership, or limited liability company, organized in accordance with

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M.G.L. c. 156A, c. 156B or c. 108A.



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(b) Firm Names. A certified public accountant shall not practice public accountancy using a professional or firm name which is misleading as to the legal form of the firm or as to the persons who are partners, officers, shareholders or members of the firm, or as to any matter with respect to which public communications are restricted by 252 CMR 3.05(2)(a). A firm name is misleading, and thus prohibited if, among other things:

1. The firm name implies the existence of a corporation when the firm is not a corporation (as by use of the abbreviation "P.C.");
2. The firm name implies existence of a partnership when the firm is not a partnership;
3. The firm name implies the existence of a limited liability partnership or a limited liability company when the firm is not a limited liability partnership or a limited liability company as duly and validly registered in the Commonwealth of Massachusetts;
4. The firm name includes the name of a person who is neither a present nor a past partner, shareholder, or member of the firm; or
5. The firm name includes the designation "and Associates", "and Assoc.", "and Company", or "& Co." when there are not in fact at least two owners, or a sole proprietor or single owner CPA firm with at least one licensed full-time employee. Sole proprietors or single owner CPA firms must notify the Board, in writing, identifying the name of the licensed full-time employee for approval of a firm name designating other than the licensee's name.

(c) Fictitious Firm Names. A fictitious firm name is any firm name that does not consist of solely the last names (except that an individual's first name may be used with the individual's last name) of the living or deceased natural persons who constitute or constituted of one or more present or former owners of the firm together with any designation of the type of legal entity in which the firm is organized. A firm may not use a fictitious firm name unless:

1. such firm name consists solely of the initials of the last names of living or deceased natural persons who constitute or constituted one or more present or former owners of the firm, or a combination of such initials and the last names of living or deceased natural persons who constitute or constituted one or more present or former owners of the firm, together with any designation of the type of legal entity in which the firm is organized; and
2. such firm name has been registered with and approved by the Board as not being false or misleading, and as not reflecting discredit upon the accounting profession.

## REGULATORY AUTHORITY

252 CMR 3.00: M.G.L. c. 13, §§ 33 and 34; c. 112, §§ 87A through E and 61.