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Traps All Tax Practitioners Should Know and Avoid

Christopher S. Rizek

Craig D. Bell

Karen Hawkins

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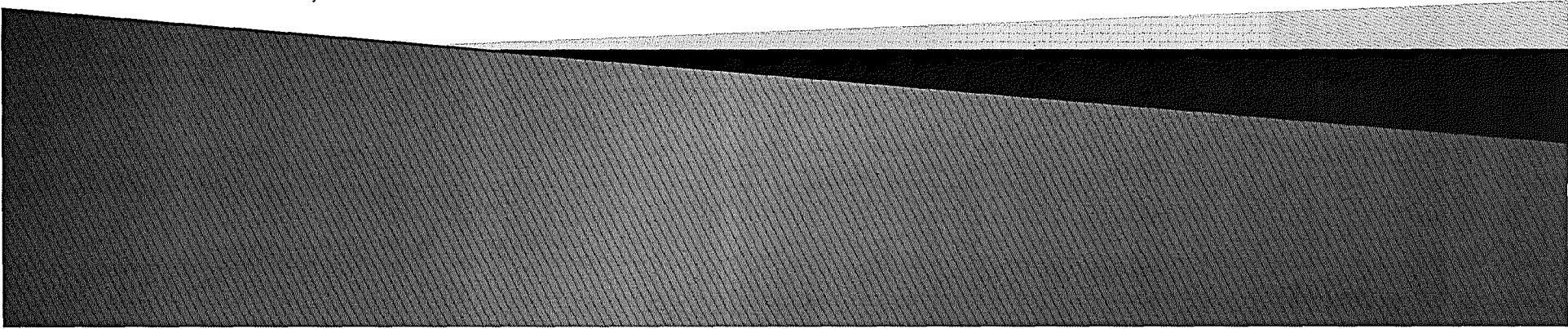
Presented by:

Christopher S. Rizek, Member & General Counsel, Caplin & Drysdale, Chartered

Craig D. Bell, Partner & Chair, Tax & Employee Benefits Department, McGuireWoods LLP

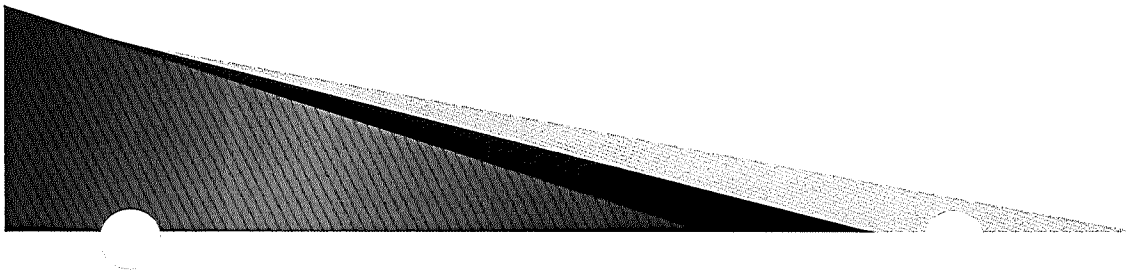
Karen Hawkins, Attorney at Law, former Director, IRS Office of Professional Responsibility

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Topics

- ▶ Introduction: common traps and pitfalls
- ▶ Sources of law: vary depending on who you are – and maybe on what you're doing?
 - Loving, Ridgely, Sexton, and their aftermath
 - Changes in Circular 230: major shifts in some areas
- ▶ Common situations

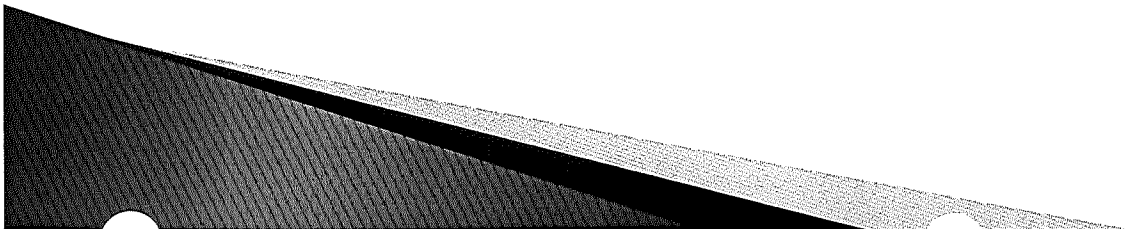


Sources of Law

- ▶ Lawyers
- ▶ Accountants
- ▶ All tax practitioners – incl. enrolled agents and actuaries
- ▶ Return preparers

Sources of Law Applicable to Lawyers

- ▶ ABA Model Rules of Professional Conduct
 - ABA does not possess disciplinary authority
- ▶ State analogues
- ▶ Commentary on model rules
- ▶ ABA and state ethics opinions
- ▶ ABA Tax Section Standards of Tax Practice Statements



Sources of Law Applicable to Accountants

- ▶ AICPA Code of Professional Conduct
 - Applies to all members
 - AICPA possesses disciplinary authority
- ▶ AICPA Statements on Standards for Tax Services (SSTS), which have been adopted by some states
- ▶ State Board of Accountancy rules (look to where you are licensed and employed)

Sources of Law Applicable to Tax “Practitioners”

- ▶ “Circular 230,” 31 C.F.R. Part 10
 - Incorporates many rules similar to ABA Model Rules of Professional Conduct and AICPA SSTs
 - BUT, the differences can matter
- ▶ The applicability of Circular 230 is very much in flux as a result of cases and uncertainty regarding the IRS’s authority to regulate “practice”

Sources of Law Applicable to Return Preparers

- ▶ Provisions of the Internal Revenue Code, e.g., §§ 6694, 6695, 7216
 - Remember how broad the definition of “return preparer” is in § 7701(a)(36) and Treas. Reg. § 301.7701-15. It’s not just signers...
- ▶ Circular 230. Revenue Procedure 81-38. Or maybe not?

Uncertain Which Applies?

- ▶ Suppose you're trained as a lawyer, working in an accounting firm?
 - “Some” of the ABA Model Rules may still apply. See Preamble [3] to Model Rules; ABA Formal Op. 336 (1974)
- ▶ Suppose you're not actively “representing” a client before the IRS (*i.e.* not in Exam, Appeals, seeking a ruling, etc.), but advising on returns and transactions?
 - This is a variation of the Ridgely issue, discussed below

What to do When the Rules Conflict?

- ▶ Follow the “most restrictive” rule
- ▶ Example: conflicts that can be “waived” (consented to by the clients)
 - ABA Model Rule 1.7(b) requires “informed consent, confirmed in writing” – with no temporal restrictions
 - Most states follow that; but some (e.g., D.C.) don’t technically require a writing

What to do When the Rules Conflict? (cont'd)

- BUT, Cir. 230, §10.29(b) not only requires that consent be done “at the time” the conflict becomes known, but that it be confirmed in writing “within a reasonable time” and “in no event later than 30 days” after the conflict is identified
- AND, Cir. 230, §10.29(c) requires that the consent be maintained 36 months *after* the representation is concluded

What to do When the Rules Conflict? (cont'd)

- ▶ Other examples of potential rule conflicts:
 - Levels of authority: what's “ethical” v. what the Code and Cir. 230 require
 - Fees, esp. contingent fees post-Ridgely
 - Knowledge of client's error or omission
 - Competence standards

Circular 230 – Loving, Ridgely, and aftermath

- ▶ There are two sources of IRS's authority to regulate practitioners
- ▶ 5 U.S.C. § 500 broadly authorizes attorneys to practice before all Federal agencies and CPAs to practice before the IRS
- ▶ 31 U.S.C. § 330 specifically deals with the regulation of practice before the Department of the Treasury

5 U.S.C. § 500

Section 500. Administrative practice; general provisions.

(a) For the purpose of this section –

- (1) “agency” has the meaning given it by section 551 of this title; and
- (2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

5 U.S.C. § 500 (cont'd)

(d) This section does not –

- (1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;
- (2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;
- (3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or
- (4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

5 U.S.C. § 500 (cont'd)

(e) Subsections (b)-(d) of this section do not apply to practice before the United States Patent and Trademark Office with respect to patent matters that continue to be covered by chapter 3 (sections 31-33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

Points to Notice About 5 U.S.C. § 500

- ▶ Any licensed attorney or CPA may represent a taxpayer before the IRS, subject to getting a power of attorney
- ▶ Attorneys can represent clients before any “agency” (Treasury or other) per para. (b), but CPAs can represent them only before the IRS
- ▶ This section does *not* authorize the practice of law or of accounting. Those are still matters of state licensing
- ▶ (d)(2): This provision does not authorize or limit discipline of individuals appearing before an agency. That’s also a function of state law (or ... of 31 U.S.C. § 330?)

31 U.S.C. § 330

Section 330. Practice before the Department.

- (a) Subject to section 500 of title 5, the Secretary of the Treasury may –
- (1) regulate the practice of representatives of persons before the Department of the Treasury; and
 - (2) before admitting a representative to practice, require that the representative demonstrate –
 - (A) good character;
 - (B) good reputation;
 - (C) necessary qualifications to enable the representative to provide to persons valuable service; and
 - (D) competency to advise and assist persons in presenting their cases.

31 U.S.C. § 330 (cont'd)

(b) After notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department or censure a representative who –

- (1) is incompetent;
- (2) is disreputable;
- (3) violates regulations prescribed under this section; or
- (4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.

The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to or in lieu of any suspension, disbarment, or censure of the representative.

31 U.S.C. § 330 (cont'd)

(c) After notice and opportunity for a hearing to any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code of 1986, the Secretary may-

(1) provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, and

(2) bar such appraiser from presenting evidence or testimony in any such proceeding.

(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

Points to Notice About 31 U.S.C. § 330

- ▶ Authority to admit and regulate practice before Treasury under (a) is expressly made “subject to” 5 U.S.C. § 500. But that statute is broader, not narrower; and it does not authorize or limit an agency’s ability to discipline practitioners . So ... what does that mean?
- ▶ Treasury has authority to “regulate practice” per (a). But per (a)(2) it can require good character, reputation, and other qualifications before admitting people to practice
- ▶ And per (b) it has the statutory authority to suspend or disbar “incompetent” or “disreputable” representatives, anyone who violates procedural regulations, or certain others

Points to Notice About 31 U.S.C. § 330 (cont'd)

- ▶ Thus, willfully failing to file your own tax returns means you can be disbarred from practice before the IRS. *E.g.*, Director, OPR v. Petrillo, No. 2009-21 (April 22, 2011), available at <http://www.irs.gov/taxpros/actuaries/article/0,,id=183923,00.html>
- ▶ Why? It doesn't have anything to do with your practice before the IRS. But it's "disreputable conduct." See Cir. 230 § 10.51(a)(6)
- ▶ There are of course numerous defenses – *e.g.*, whether the failure to file was "willful" – but for present purposes the point is just that "incompetence or disreputable conduct" can result in revocation of your ability to practice before the IRS

Points to Notice About 31 U.S.C. § 330 (cont'd)

- ▶ The language in para. (d) relates to shelter opinions. It was expressly added by Congress in 2004, in response to the argument that Treasury couldn't regulate opinion-writing because it wasn't "practice before the IRS." But it is also perplexing:
 - It's written in the negative: it doesn't add authority, just says nothing here or elsewhere affects that authority
 - It indicates Treasury can impose standards regarding tax shelter opinions. But what about non-tax shelter opinions or "other written advice"?
- ▶ § 330 begs the question of what "practice of representatives ... before the Department of Treasury" is. BUT that question was answered in Loving

Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014)

- ▶ Loving and other plaintiffs were mere return preparers – not CPAs, attorneys, or enrolled agents
- ▶ They sued to enjoin application to them of the return preparer testing and CPE requirements that IRS had promulgated in Circular 230 as part of their new return preparer regulation program (“the Regulations”)
- ▶ Theory: “return preparation” isn’t “practice before the Treasury,” and “preparers” aren’t “representatives”
- ▶ The D.C. Circuit described six reasons why the Regulations failed to satisfy step 1 (and step 2) of the *Chevron* test

Loving (cont'd)

1. Tax return preparers are not “representatives.” Representatives have authority to bind their principal, like an “agent”
2. Preparing tax returns does not constitute “practice” before the Treasury Department. The statute suggests that Congress intended “practice” to mean adversarial proceedings
3. The history of the statute indicates that Congress intended the statute to cover representation in contested proceedings. Originally enacted in 1884 as part of legislation relating to property lost in military service

Loving (cont'd)

4. The broader statutory framework suggests that the statute should be read narrowly. Congress has adopted a number of statutes covering the conduct of tax return preparers. These would be superfluous if IRS could already regulate them
5. It should not be presumed that Congress intended a broad delegation of authority to regulate tax return preparers. The regulations would have affected hundreds of thousands of preparers in a multi-billion dollar industry
6. The IRS had not previously interpreted the statute as granting authority to regulate tax return preparers. In fact, several IRS representatives previously stated that the IRS did not possess such authority

Ridgely v. Lew, 2014 WL 3506888

(D.D.C. July 16, 2014)

- ▶ Ridgely and his accounting firm (Ryan LLC) prepare “ordinary” refund claims (claims not on original returns, but before any IRS audit notice)
- ▶ They argued that preparing such claims is not “practice before the IRS,” and thus that the IRS could not regulate the kind of fees they charged, in particular the Cir. 230 § 10.27 restriction on “contingent” fees

Ridgely (cont'd)

- ▶ The District Court followed Loving and held that preparation of “ordinary refund claims” is not “practice before the IRS” either
- ▶ This ruling was practically compelled by the logic of Loving
- ▶ *Ergo*, the Court concluded, the IRS cannot regulate Ridgely’s contingent fee arrangement with his client either

Aftermath

- ▶ Sexton v. Hawkins, No. 2:13-cv-00893-RFB-VCF (D. Nev. Oct. 30, 2014)
 - Sexton is a former practitioner (lawyer), previously suspended by OPR, who asserts he now only prepares returns.
 - OPR asserts evidence of written tax shelter advice-giving exists
 - S argues that OPR has no authority to investigate him, since his is not a "practitioner" but a mere tax return preparer (post-Loving)
 - OPR has been tentatively *enjoined* from requiring production of documents to investigate whether S is engaged in practice. And IRS was further prohibited from suspending Sexton's ability to e-file because he failed to produce documents

Aftermath (cont'd)

- ▶ Davis v. IRS, No. 1:14-cv-00261 (N.D. Ohio 2014)
 - Davis is a (formerly) suspended CPA who prepares returns. He argued that the IRS abused its discretion by refusing to let him use the e-filing system, even after OPR and the Ohio Board of Accountancy determined he was fit to resume/continue practice
 - The IRS apparently relented and the case was settled in December, 2014

Observations and... what happens next?

- ▶ Did the Loving court get it right?
- ▶ Each of its 6 reasons is at least debatable – esp. that “representatives” are “agents” or that IRS had not previously said it could regulate submitters of returns
- ▶ But most importantly for the long run of OPR and Cir. 230, Loving held that mere return preparation is not within the group of activities constituting “practice before” the IRS
- ▶ Ridgely is even more revolutionary

Observations and...(cont'd)

- ▶ If “practice before” the IRS means only actual representation of taxpayers in controversies (audits, rulings, collection, appeals, etc.), even by persons (CPAs and attorneys) who are otherwise practitioners, then what happens to rules (and OPR’s authority) re:
 - Contingent fees on original returns (Cir. 230 §10.27)?
 - Return positions (§ 10.34)?
 - Written advice (§ 10.37)?
 - Conflicts (§ 10.29)?
 - Negotiating taxpayer checks (§ 10.31)?

Observations and...(cont'd)

- ▶ Everyone appears to have concluded that new legislative authority is therefore required
 - How likely is that?
 - Will it be another tweak to § 330 or a complete overhaul?
- ▶ In the meantime, return preparers are subject to “regulation” pursuant to certain provisions of the IRC (*e.g.*, §§ 6109, 6694-95, 6700, 7206(2), etc.) and Revenue Procedure 81-38.

Observations and... (cont'd)

- ▶ “Bad cases make bad law”
- ▶ A “perfect storm” of bad drafting? § 330 needs a complete overhaul
- ▶ “We’re all APA lawyers now”

Changes in Cir. 230

- ▶ Last year the IRS finalized amendments to Circular 230 that had been proposed in 2012
- ▶ Generally, these changes involve
 - Eliminating the “covered opinion” rules
 - Substituting a general “competence” rule
 - Clarifying “due diligence” requirements for written advice
 - Expanding required compliance programs
 - Changing rules re negotiation of taxpayer checks
 - And some procedural provisions

The Covered Opinion Rules are Dead!...

- ▶ The biggest change is the elimination of the “covered opinion” rules in section 10.35
- ▶ These were widely regarded as ineffective
 - They applied only to narrowly-defined transactions – but then also to anything “a significant purpose” of which is avoidance/evasion
 - They were riddled with exceptions
 - They were so onerous everyone used the exceptions to avoid having to follow the rules

... Long Live the New § 10.35!

“A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.”

New § 10.35 (cont'd)

- ▶ Effective date June 12, 2014
 - Conduct before?
- ▶ Where's the rule? What do I have to do?!
 - *Cf.* ABA Model Rule 1.1: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
- ▶ Do we now have a principles-based system rather than a rules-based system? Everything has to be “reasonable” under the circumstances?

New § 10.37: written advice (or, be careful what you ask for...)

- ▶ This now applies to “all” written advice, not just written advice “other than” covered opinions
- ▶ Most of the language, however, comes from
 - Old § 10.37, plus
 - Lots of language from old § 10.35, PLUS
 - “Reasonable”!

New § 10.37 (cont'd)

- ▶ Para. (a)(1): written advice must meet (a)(2)
- ▶ (a)(2): six requirements
 - Based on reasonable factual and legal assumptions
 - Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know
 - Use reasonable efforts to ascertain the facts
 - Not rely upon representations, statements, etc. if reliance on them would be unreasonable
 - Relate applicable law and authorities to facts
 - Not take into account the “audit lottery”

New § 10.37 (cont'd)

- ▶ Para. (b): when can you rely on others? It's reasonable to do so, UNLESS
 - The practitioner knows or reasonably should know that the opinion of the other person should not be relied on
 - The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or
 - The practitioner knows or reasonably should know that the other person has an unresolved conflict of interest (per 10.29)

New § 10.37 (cont'd)

- ▶ Para. (c): standard of review
- ▶ (c)(1): “reasonable practitioner” standard for most cases – which includes limits on the scope of the engagement
- ▶ (c)(2): if an opinion is being marketed, it’s a “reasonable practitioner” standard, BUT taking into account “the additional risk caused by the practitioner’s lack of knowledge of the taxpayer’s particular circumstances”
 - Huh?

New § 10.36:

Procedures to ensure compliance

- ▶ Previously applied just to
 - Covered opinion rules
 - Return preparation
- ▶ Now applies to all of Cir. 230
- ▶ Applies to individual(s) who have or share overall compliance responsibility – AND the IRS will find someone!
- ▶ Note: this kind of “vicarious liability” is different from practically every other regime we’ve discussed today

New § 10.36 (cont'd)

- ▶ Para. (b) – can be disciplined IF
 - The individual through “willfulness, recklessness or gross incompetence” fails to have adequate procedures to comply with Circular 230 – AND there exists a pattern or practice of non-compliance
 - The individual through “willfulness, recklessness or gross incompetence” fails to ensure the procedures to comply with Circular 230 are followed – AND there’s a pattern or practice of non-compliance
 - The individual knows or should know of a pattern of non-compliance and fails to take “prompt action” to correct the noncompliance

Other changes to Cir. 230

- ▶ Amendment to § 10.31, negotiation of taxpayer checks, to make it clear the rule applies to any kind of payment (electronic, etc.)
 - As noted previously, this would seem vulnerable in the wake of Loving and Ridgely
- ▶ Amendment to § 10.82, expedited suspension procedures
- ▶ Numerous clerical amendments

Scenario 1: Conflicts

- ▶ You and a junior colleague are meeting for the first time with a couple, H & W, who filed joint returns and have now been notified they are under audit.
- ▶ After discussing the issues the IRS has asked about in the initial IDR, you ask the routine question, “Is there anything else in your return that the IRS might be concerned about?” Both H & W say “no”.

Scenario 1: Conflicts (cont'd)

► Questions:

- What should you say about potential conflicts in this initial meeting?
- What should you say about potential conflicts in your engagement letter?
- Do you need a conflict waiver now?

Scenario 1: Conflicts (cont'd)

- ▶ An hour after the meeting you get a phone call from H, in which he tells you “confidentially” that some of the “business expenses” on the Schedule C for his business (items such as meals, travel, gifts, etc.) were really spent on his girlfriend, about whom his wife obviously doesn’t know.

Scenario 1: Conflicts (cont'd)

► Questions:

- What do you tell H in this phone call?
- What – if anything – can you tell W about the situation?
- Can you get a conflict waiver now? And what would it say?
- Do you have to withdraw entirely?
- Is there a better way to have begun this Scenario?

Scenario 2: Conflicts

- ▶ You are asked by Son and Daughter to assist with some end-of-life estate planning for their aged Mother.
- ▶ Questions:
 - Who is your client?
 - Can you represent M, S, and D all at once?
 - Does it matter “how well they are getting along”?
 - What do you say about potential conflicts?
 - In your engagement letter
 - In a conflict waiver letter

Scenario 2: Conflicts (cont'd)

- ▶ At your next meeting with Son and Daughter it becomes apparent to you that they have different views over the future disposition of Mother's estate.
- ▶ Questions:
 - Can you still represent them all?
 - Do you go to M for resolution of the dispute?
 - What if M isn't fully aware of S & D's dispute? What do you tell her?
 - What if M isn't even fully mentally capable of deciding? When should you have made that determination?

Scenario 3: Conflicts

- ▶ Over the past six years, you and your partners have represented individuals participating, or seeking to participate, in IRS Offshore Voluntary Disclosure programs. A Swiss bank, which one of your corporate partners has represented for many years, tells your partner that it is a Category 2 bank under the DOJ's bank disclosure program and asks for his assistance in requesting a non-prosecution agreement. Under the terms of the program, the bank would provide DOJ with information about its activities and its U.S. account holders.

Scenario 3: Conflicts (cont'd)

► Questions:

- Do you have a conflict?
- Can it be waived/consented to?
- What must you say in the conflict waive letter?

Scenario 3: Conflicts (cont'd)

- ▶ Suppose your firm is then contacted to represent another Swiss bank, Bank X, in the DOJ program. You immediately run a conflict check and determine that two of your individual voluntary disclosure clients were customers of Bank X.

Scenario 3: Conflicts (cont'd)

- ▶ Client A moved her account from UBS to Bank X in 2009, after which she contacted you and entered the OVDI program. Thus, she filed FBARs for 2009 and later years with respect to her account at Bank X; paid all taxes on the income from that account; and entered a Closing Agreement with the IRS related to the prior UBS years. You closed her file in 2013.
- ▶ Questions:
 - Do you have a conflict?
 - Is it subject to waiver/consent?

Scenario 3: Conflicts (cont'd)

- ▶ Client B was a Bank X customer continuously from 1987 through today. He consulted your partner in 2010 about entering the disclosure programs, but he (1) had losses in most years, and (2) had filed all required FBARs,. Only in 2008 and 2009 were there any gains that went unreported. So, your partner advised B simply to amend his 2007 and 2008 returns and pay the small amount of additional tax, which he did. Your firm has never formally closed his file, however.
- ▶ Questions:
 - Do you have a conflict?
 - Is it subject to waiver/consent?

Scenario 4: Conflicts & Errors

- ▶ In preparing client's current return, you review a few prior years' returns, and realize that the client missed a regulatory election 2 years ago and has been incorrectly reporting an item ever since then.
- ▶ Questions:
 - What ethical obligations do you have?
 - To your client?
 - To the IRS?
 - Would it matter if the error occurred 5 years ago in an otherwise-closed year?

Scenario 4: Conflicts & Errors (cont'd)

- ▶ Suppose your client realizes the error first, and calls to your attention that one of your partners was responsible for it. The client “expects you to fix it.”
- ▶ Questions:
 - Do you have a conflict?
 - Is it subject to waiver/consent?
 - Does it matter that the error may be corrected via 9100 relief because it was a regulatory election?

Scenario 5: written advice

- ▶ You and your partners are working on a real estate transaction for your client, partnership Q. Q's investors want to see an opinion from your firm before the transaction closes; but as you identify more and more issues with the transactional documents, they keep getting amended so that Q may claim certain tax benefits from the transaction.

Scenario 5: written advice (cont'd)

► Questions:

- What ethical obligations do you have with respect to this opinion?
- How can you satisfy them if the transaction documents keep changing?

Scenario 5: written advice (cont'd)

- ▶ You and your partners seriously disagree over the level of authority for the claimed tax benefits of this transaction. Because it is innovative, no one is prepared to say “more likely than not.” You are at “substantial authority,” but one of your partners vehemently disagrees and thinks the transaction has only a “reasonable basis”. She thinks the penalty exposure should be disclosed to the client, including advising the client to disclose the position on the return, if the client is to avoid a penalty.

Scenario 5: written advice (cont'd)

► Questions:

- What ethical obligations do you have with respect to this disagreement?
- What law applies?
- What do you say to Q when its managers tell you they “really don’t want to include a disclosure”?

Scenario 6: return preparation

- ▶ In reviewing a client's return right before it is filed, you notice an incorrect basis computation. When you call in the junior colleague who prepared the return and talk about the error, you realize he simply had a misconception of how the basis adjustment rules work. Then he tells you that he has “done a dozen of them this way just this year.”

Scenario 6: return preparation (cont'd)

► Questions:

- What must you do with respect to the as-yet-unfiled return?
- What must you do with respect to the other, already-filed returns?
- What must you do to ensure that other return preparers in your group know about the misconception and don't repeat it?

Scenario 7: IRS error

- ▶ You have negotiated a settlement with Appeals. When you receive the Appeals Officer's computations, you are surprised to see that the deficiency is \$155,222.34 instead of \$1,552,223.40, which you had anticipated. The Appeals Officer obviously has made an error, just missing a decimal point.

Scenario 7: IRS error (cont'd)

► Questions:

- Do you have an obligation to tell the IRS about the error?
- Does it matter whether the error is unilateral by the IRS or resulted from a mistake on a document submitted to the IRS by the taxpayer? What if you prepared the document containing the error?
- Does it matter whether the error is (i) purely mathematical, (ii) based on the Appeals Officer's misperception of the facts, or (iii) the result of a misunderstanding or misapplication of by the law by the Appeals Officer?
- Does it matter whether the case is docketed or non-docketed?

Questions?

Christopher S. Rizek
202.862.8852
crizek@capdale.com

Craig D. Bell
804.775.1179
cdbell@mcguirewoods.com

Karen L. Hawkins
541-547-3942
klhsatyr@gmail.com

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