

Ethical Challenges for Nonprofit Organization Advisors

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UT Law Nonprofit Organizations Institute

Panelists:

Meghan Biss, Caplin & Drysdale

Bridget Weiss, Arnold & Porter

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Agenda

- What Rules Apply?
 - Attorneys
 - CPAs
 - In-House Attorneys and CPAs
 - Practice Before the IRS
- Overview of Rules and Common Scenarios
 - Conflicts of Interest
 - Truthfulness and Candor
 - Competence and Diligence
- Enforcement
 - State Proceedings
 - IRS Oversight

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What Rules Apply?

- Attorneys: State Courts/Bar Associations – Rules of Professional Conduct
- CPAs: AICPA Code of Professional Conduct & Statements on Standards for Tax Services
- Special Rules re Tax
 - IRC provisions
 - §§ 6694, 7407 (applicable to “return preparers”)
 - § 6701 (applicable to advisors or preparers)
 - Circular 230 – Regulations Governing Practice Before the IRS (applicable to all tax “practitioners”)

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Ethical Rules for Attorneys

- Each state establishes its own rules of professional conduct, generally modeled on ABA Model Rules
- Refer to rules where admitted and where employed
- Sources of guidance
 - State and local bar ethics opinions
 - ABA Ethics Opinions (ABA possesses no disciplinary authority)
 - ABA Opinion 85-352
 - Comments to state and Model Rules

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Ethical Rules for CPAs

- AICPA Code of Professional Conduct
 - Applies to all members, including those in industry
 - AICPA possesses disciplinary authority
- AICPA Statements on Standards for Tax Services (SSTs)
 - Some states have adopted SSTs as enforceable standards
- State Board of Accountancy rules (where licensed and where employed)

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Considerations for In-House Attorneys and CPAs

- Generally no differentiation between in-house professionals and outside preparers/advisors
- Most states treat practice of law in-house as still subject to state regulation
 - *See* MRPC 1.0, Comment 3
 - “With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct . . . ”
- AICPA Code of Professional Conduct applies to all members, including those in industry. AICPA Code ¶0.100.010.01

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