

# Ethical Challenges for Nonprofit Organization Advisors

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1

## 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

2

2

## 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”)

3

## 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

4

## 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)

5

## 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

6

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