CANONS OF ETHICS

Policy

AACE International Members shall uphold and advance the honor, dignity, and practices of Cost Engineering and Cost Management. In keeping with the high standards of ethical conduct members shall:

- Be honest and impartial;
- Serve employer, clients, and the public with dedication;
- Strive to increase the competence and prestige of their practice;
- Apply knowledge and skill to advance human welfare; and,
- Ensure adherence to health, safety, and welfare standards.

Throughout the Canons of Ethics the term "Member" shall be read to include:

- All classes of AACE International membership;
- All AACE International certificants and those applying for certification and/or sitting for examination whether they are AACE International members or non-members.
- Other professionals providing expert input to AACE International through professional courses of instruction using AACE International materials.
- Other professionals supporting development of educational and technical products that bear the AACE International imprimatur.

I. Relations with the Public

Members shall hold paramount the health, safety, and welfare of the public, including that of future generations. [Paragraph: I.1]

Members shall endeavor to extend public knowledge and appreciation of Cost Engineering and Cost Management and its achievements. [I.2]

Members shall oppose any untrue, unsupported, or exaggerated statements regarding Cost Engineering and Cost Management. [I.3]

Members shall be dignified and modest, ever upholding the honor and dignity of their profession. [I.4]

Members shall express an opinion on cost engineering or cost management subject only when it is founded on adequate knowledge and honest conviction. [I.5]

Members, concerning Cost Engineering and/or/ Cost Management matters, shall issue no statements, criticisms, or arguments that are inspired or paid for by an interested party or parties, unless they preface their comments by identifying themselves, by disclosing the identities of the party or parties on whose behalf they are speaking, and by revealing the existence of any pecuniary interest they may have in matters under discussion. [I.6]

Members shall approve or seal only those documents, reviewed or prepared by them, which are determined to be safe for public health and welfare in conformity with accepted cost engineering, cost management and economic standards. [I.7]

Members whose judgment is overruled under circumstances where the health, safety, and welfare of the public are endangered shall inform their clients and employers of the possible consequences. [I.8]

Members shall work through professional societies to encourage and support others who follow these concepts. [I.9]

Members shall work only with those who follow the concepts of health, safety, and welfare. [I.10]

Members shall be objective and truthful in professional reports, statements, and testimony. They shall include all relevant and pertinent information in such reports, statements, and testimony. [I.11]

Unless authorized by the President or the Executive Director/CEO, no members shall represent that any opinion they offer represents the opinion of AACE International. Further, no member shall represent to commit AACE International to any task, responsibility, or contract without the approval of the President or Executive Director/CEO. [1.12]

II. Relations with the Employees and Clients

Members shall act in all matters as a faithful agent or trustee for each employer or client. [Paragraph: II.1]

Members shall act fairly and justly toward vendors and contractors and shall not accept any commissions or allowances from vendors or contractors, directly or indirectly. [II.2]

Members shall inform their employer or client of financial interest in any potential vendor or contractor, or in any invention, machine, or apparatus that is involved in a project or work for either employer or client. Members shall not allow such interest to affect any decisions regarding cost engineering or cost management services that they may be called upon to perform. [II.3]

Members, when as a result of their studies, find that a project or work shall not be successful, or if their Cost Engineering and Cost Management or economic judgment is overruled, shall so advise their employer or client. [II.4]

Members shall undertake only those Cost Engineering and Cost Management assignments for which they are qualified. Members shall engage or advise their employers or clients to engage specialists whenever their employer's or client's interests are served best by such an arrangement. Members shall cooperate fully with specialists so engaged. [II.5]

Members shall treat information coming to them in the course of their assignments as confidential and shall not use such information as a means of making personal profit if such action is adverse to the interests of their clients, their employers, or the public. [II.6]

Members shall not disclose confidential information concerning the business affairs or technical processes of any present or former employer, client, or bidder under evaluation, without consent, unless required by law. [II.7]

Members shall not reveal confidential information or finding of any commission or board of which they are Members, unless required by law. [II.8]

Members shall not duplicate for others, without express permission of the client(s), designs, calculations, sketches, etc., supplied to them by clients or bidders. [II.9]

Members shall not use confidential information coming to them in the course of their assignments as a means of making personal profit if such action is adverse to the interests of their clients, employers, or the public. [II.10]

Members shall not accept compensation—financial or otherwise—from more than one party for the same service, or for other services pertaining to the same project or work, without the consent of all interested parties. [II.11]

Members, employed by others, shall engage in supplementary employment or consulting practice only with the consent of their employer. [II.12]

Members shall not use equipment, supplies, laboratory, or office facilities of their employers to carry on outside private practice without the consent of their employers. [II.13]

Members shall not solicit a contract from a governmental body on which a principal officer or employee of their organization serves as a Member. [II.14]

Members shall not request, propose, or accept professional commissions on a contingent basis under circumstances that compromise their professional judgment. [II.15]

Members shall act with fairness and justice to all parties when administering a project or work. [II.15]

Members, before undertaking a project or work for others in which the Member may make improvements, plans, designs, inventions, or records that may justify copyrights or patents, shall enter into a positive agreement regarding the rights of respective parties. [II.16]

Members shall admit and accept their own errors when proven wrong and refrain from distorting or altering the facts to justify their decisions. [II.17]

Members shall not attempt to attract an employee from another employer by false or misleading representations. [II.18]

Members shall act in professional matters for each employer or client as faithful agents or trustees and shall avoid conflicts of interest. [II.19]

Members shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their employers or clients of any business association, interests, or circumstances that could influence their judgment or the quality of their services. [II.20]

Members shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with their clients or employers in connection with project or work for which they are responsible. [II.21]

III. Relations with Other Professionals

Members shall acknowledge that credit for Cost Engineering and Cost Management work is given to those to whom credit is properly due. [Paragraph: III.1]

Members shall provide prospective employees with complete information on working conditions and their proposed status of employment. After employment begins, Members shall keep the employee informed of any changes in status and working conditions. [III.2]

Members shall not maliciously or falsely, directly or indirectly, injure the professional reputation, prospects, practice, or employment of another, or shall they indiscriminately criticize another's project or work. Proof that another cost professional has been unethical, unfair, or illegal in their practice shall be cause for advising proper authority. [III.6]

Members shall not compete unfairly with other cost professionals. [III.7]

Members shall cooperate in advancing the Cost Engineering and Cost Management profession by interchanging information and experience with other cost professionals and students, by contributing to public communication media, to cost engineering, and cost management and scientific societies, and schools. [III.8]

Members shall not seek to acquire or provide to other individuals certification examination questions or any other certification examination materials, to include derivative materials, not in the public domain. [III.9]

Members shall not falsify or permit misrepresentation of their own or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degrees or responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment, shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, accomplishments, or membership in technical societies. [III.10]

Members shall prepare articles for technical or lay press that are only factual, dignified, and free from ostentatious or laudatory implications. Such articles shall not imply credit to the cost professionals for other than their direct participation in the project or work described unless credit is given to others for their share of the project or work. [III.11]

IV. Standards of Professional Performance

Members shall be dignified and modest in explaining their accomplishments and merit and shall avoid any act tending to promote their own interests at the expense of the integrity, honor, and dignity of the profession. [Paragraph IV.1]

Members, when serving as expert witnesses, shall express Cost Engineering and Cost Management opinions only when it is founded upon adequate knowledge of the facts, upon a background of technical competence, and upon honest conviction. [IV.2]

Members shall continue their professional development throughout their careers and shall provide opportunities for the professional development of cost professionals under their supervision. [IV.3]

Members shall encourage their Cost Engineering and Cost Management employees to attend and present papers at professional and technical society meetings. [IV.6]

Members shall uphold the principle of mutually satisfying relationships between employers and employees with respect to terms of employment, including professional grade descriptions, salary ranges, and fringe benefits. [IV.7]

Members serving as AACE International Section Officers shall not claim that they or their employers represent AACE International for the purposes of gaining or soliciting business. [IV.8]

Procedures

Ethics Complaints

Any AACE International member or AACE International staff member may file a complaint against an AACE International member alleging a violation of this Canon of Ethics. Complaints shall be filed in accordance with the Bylaws and the Policies and Procedures of the Ethics Committee. Complaints from non-members who have direct knowledge of an alleged violation may also be considered.

Recommendations for Changes or Corrections

Recommendations for changes or corrections to the AACE International Canons of Ethics are welcome. Changes or corrections shall be directed to: Chair, AACE International Ethics Committee or the Executive Director, AACE International. Each recommended change and/or correction shall have full consideration by the AACE International Ethics Committee. The Chair of the Ethics Committee shall provide a full response to the submitter and all other affected parties.

Administrative Management of the AACE International Canons of Ethics

The Chair, appointed annually by the President, is responsible to the President and Board of Directors for administrative management of the Canons of Ethics.

Changes and Approval of Changes to the AACE International Canons of Ethics

Minor administrative corrections and/or changes will be coordinated between the Chair of the AACE International Ethics Committee and the Executive Director. Suggestions considered to have merit will be forwarded, with a recommendation, to the Board of Directors. The Board of Directors will make a motion to adopt any changes, as needed. Resulting action will be implemented by the Executive Director/CEO.

Significant and/or major changes to the AACE International Canons of Ethics will be coordinated between the Chair of the AACE International Ethics Committee and the Executive Director. Suggestions considered to have merit will be forwarded, with a recommendation, to the Board of Directors. The Board of Directors will make a determination if the proposal shall be presented for public comment. Proposals recommended for public comment will be broadly presented to AACE International Membership for comment over a thirty-day period. All comments will be evaluated with responses to the submitter. The proposed change to the Canons of Ethics will be resubmitted, with comments received. The Board of Directors will make a motion to adopt any changes, as needed. Resulting action will be implemented by the Executive Director/CEO.

Publication and Maintenance

The Executive Director/CEO is responsible for publication and maintenance of the AACE International Canons of Ethics.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512 **July 29, 2024**

Generative Artificial Intelligence Tools

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

I. Introduction

Many lawyers use artificial intelligence (AI) based technologies in their practices to improve the efficiency and quality of legal services to clients.[1] A well-known use is electronic discovery in litigation, in which lawyers use technology-assisted review to categorize vast quantities of documents as responsive or non-responsive and to segregate privileged documents. Another common use is contract analytics, which lawyers use to conduct due diligence in connection with mergers and acquisitions and large corporate transactions. In the realm of analytics, AI also can help lawyers predict how judges might rule on a legal question based on data about the judge's rulings; discover the summary judgment grant rate for every federal district judge; or evaluate how parties and lawyers may behave in current litigation based on their past conduct in similar litigation. And for basic legal research, AI may enhance lawyers' search results.

This opinion discusses a subset of AI technology that has more recently drawn the attention of the legal profession and the world at large – generative AI (GAI), which can create various types of new content, including text, images, audio, video, and software code in response to a user's prompts and questions.[2] GAI tools that produce new text are prediction tools that generate a statistically probable output when prompted. To accomplish this, these tools analyze large amounts of digital text culled from the internet or proprietary data sources. Some GAI tools are described as "self-learning," meaning they will learn from themselves as they cull more data. GAI tools may assist lawyers in tasks such as legal research, contract review, due diligence, document review, regulatory compliance, and drafting letters, contracts, briefs, and other legal documents.

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[1] There is no single definition of artificial intelligence. At its essence, AI involves computer technology, software, and systems that perform tasks traditionally requiring human intelligence. The ability of a computer or computer-controlled robot to perform tasks commonly associated with intelligent beings is one definition. The term is frequently applied to the project of developing systems that appear to employ or replicate intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize, or learn from past experience. BRITTANICA, https://www.britannica.com/technology/artificial-intelligence (last visited July 12, 2024).

[2] George Lawton, *What is Generative AI? Everything You Need to Know*, TECHTARGET (July 12, 2024), https://www.techtarget.com/searchenterpriseai/definition/generative-AI.

GAI tools—whether general purpose or designed specifically for the practice of law—raise important questions under the ABA Model Rules of Professional Conduct.[3] What level of competency should lawyers acquire regarding a GAI tool? How can lawyers satisfy their duty of confidentiality when using a GAI tool that requires input of information relating to a representation? When must lawyers disclose their use of a GAI tool to clients? What level of review of a GAI tool's process or output is necessary? What constitutes a reasonable fee or expense when lawyers use a GAI tool to provide legal services to clients?

At the same time, as with many new technologies, GAI tools are a moving target—indeed, a *rapidly* moving target—in the sense that their precise features and utility to law practice are quickly changing and will continue to change in ways that may be difficult or impossible to anticipate. This Opinion identifies some ethical issues involving the use of GAI tools and offers general guidance for lawyers attempting to navigate this emerging landscape.[4] It is anticipated that this Committee and state and local bar association ethics committees will likely offer updated guidance on professional conduct issues relevant to specific GAI tools as they develop.

II. Discussion

A. Competence

Model Rule 1.1 obligates lawyers to provide competent representation to clients.[5] This duty requires lawyers to exercise the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation," as well as to understand "the benefits and risks associated" with the technologies used to deliver legal services to clients.[6] Lawyers may ordinarily achieve the requisite level of competency by engaging in self-study, associating with another competent lawyer, or consulting with an individual who has sufficient expertise in the relevant field.[7]

To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations

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[3] Many of the professional responsibility concerns that arise with GAI tools are similar to the issues that exist with other AI tools and should be considered by lawyers using such technology.

[4] This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2023. The Opinion addresses several imminent ethics issues associated with the use of GAI, but additional issues may surface, including those found in Model Rule 7.1 ("Communications Concerning a Lawyer's Services"), Model Rule 1.7 ("Conflict of Interest: Current Clients"), and Model Rule 1.9 ("Duties to Former Clients"). *See, e.g.*, Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, at 7 (2024) (discussing the use of GAI chatbots under Florida Rule 4-7.13, which prohibits misleading content and unduly manipulative or intrusive advertisements); Pa. State Bar Ass'n Comm. on Legal Ethics & Prof'l Resp. & Philadelphia Bar Ass'n Prof'l Guidance Comm. Joint Formal Op. 2024-200 [hereinafter Pa. & Philadelphia Joint Formal Opinion 2024-200], at 10 (2024) ("Because the large language models used in generative AI continue to develop, some without safeguards similar to those already in use in law offices, such as ethical walls, they may run afoul of Rules 1.7 and 1.9 by using the information developed from one representation to inform another."). Accordingly, lawyers should consider all rules before using GAI tools.

[5] MODEL RULES OF PROF'L CONDUCT R. 1.1 (2023) [hereinafter MODEL RULES].

[6] MODEL RULES R. 1.1 & cmt. [8]. *See also* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 477R, at 2–3 (2017) [hereinafter ABA Formal Op. 477R] (discussing the ABA's "technology amendments" made to the Model Rules in 2012).

[7] MODEL RULES R. 1.1 cmts. [1], [2] & [4]; Cal. St. Bar, Comm. Prof'l Resp. Op. 2015-193, 2015 WL 4152025, at *2–3 (2015).

of the specific GAI technology that the lawyer might use. This means that lawyers should either acquire a reasonable understanding of the benefits and risks of the GAI tools that they employ in their practices or draw on the expertise of others who can provide guidance about the relevant GAI tool's capabilities and limitations.[8] This is not a static undertaking. Given the fast-paced evolution of GAI tools, technological competence presupposes that lawyers remain vigilant about the tools' benefits and risks.[9] Although there is no single right way to keep up with GAI developments, lawyers should consider reading about GAI tools targeted at the legal profession, attending relevant continuing legal education programs, and, as noted above, consulting others who are proficient in GAI technology.[10]

With the ability to quickly create new, seemingly human-crafted content in response to user prompts, GAI tools offer lawyers the potential to increase the efficiency and quality of their legal services to clients. Lawyers must recognize inherent risks, however.[11] One example is the risk of producing inaccurate output, which can occur in several ways. The large language models underlying GAI tools use complex algorithms to create fluent text, yet GAI tools are only as good as their data and related infrastructure. If the quality, breadth, and sources of the underlying data on which a GAI tool is trained are limited or outdated or reflect biased content, the tool might produce unreliable, incomplete, or discriminatory results. In addition, the GAI tools lack the ability to understand the meaning of the text they generate or evaluate its context.[12] Thus, they may combine otherwise accurate information in unexpected ways to yield false or inaccurate results.[13] Some GAI tools are also prone to "hallucinations," providing ostensibly plausible responses that have no basis in fact or reality.[14]

Because GAI tools are subject to mistakes, lawyers' uncritical reliance on content created by a GAI tool can result in inaccurate legal advice to clients or misleading representations to courts and third parties. Therefore, a lawyer's reliance on, or submission of, a GAI tool's output—without

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[8] Pa. Bar Ass'n, Comm. on Legal Ethics & Prof'l Resp. Op. 2020-300, 2020 WL 2544268, at *2–3 (2020). *See also* Cal. State Bar, Standing Comm. on Prof'l Resp. & Conduct Op. 2023-208, 2023 WL 4035467, at *2 (2023) adopting a "reasonable efforts standard" and "fact-specific approach" to a lawyer's duty of technology competence, citing ABA Formal Opinion 477R, at 4).

[9] *See* New York County Lawyers Ass'n Prof'l Ethics Comm. Op. 749 (2017) (emphasizing that "[l]awyers must be responsive to technological developments as they become integrated into the practice of law"); Cal. St. Bar, Comm. Prof'l Resp. Op. 2015-193, 2015 WL 4152025, at *1 (2015) (discussing the level of competence required for lawyers to handle e-discovery issues in litigation).

[10] MODEL RULES R. 1.1 cmt. [8]; *see* Melinda J. Bentley, *The Ethical Implications of Technology in Your Law Practice: Understanding the Rules of Professional Conduct Can Prevent Potential Problems*, 76 J. MO. BAR 1 (2020) (identifying ways for lawyers to acquire technology competence skills).

[11] As further detailed in this opinion, lawyers' use of GAI raises confidentiality concerns under Model Rule 1.6 due to the risk of disclosure of, or unauthorized access to, client information. GAI also poses complex issues relating to ownership and potential infringement of intellectual property rights and even potential data security threats.

[12] *See,* W. Bradley Wendel, *The Promise and Limitations of AI in the Practice of Law,* 72 OKLA. L. REV. 21, 26 (2019) (discussing the limitations of AI based on an essential function of lawyers, making normative judgments that are impossible for AI).

[13] *See, e.g.*, Karen Weise & Cade Metz, *When A.I. Chatbots Hallucinate*, N.Y. TIMES (May 1, 2023).

[14] Ivan Moreno, *AI Practices Law 'At the Speed of Machines.' Is it Worth It?*, LAW360 (June 7, 2023); *See* Varun Magesh, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning, & Daniel E. Ho, *Hallucination Free? Assessing the Reliability of Leading AI Legal Research Tools*, STANFORD UNIVERSITY (June 26, 2024), *available at* https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf (study finding leading legal research companies' GAI systems "hallucinate between 17% and 33% of the time").

an appropriate degree of independent verification or review of its output—could violate the duty to provide competent representation as required by Model Rule 1.1.[15] While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations.

The appropriate amount of independent verification or review required to satisfy Rule 1.1 will necessarily depend on the GAI tool and the specific task that it performs as part of the lawyer's representation of a client. For example, if a lawyer relies on a GAI tool to review and summarize numerous, lengthy contracts, the lawyer would not necessarily have to manually review the entire set of documents to verify the results if the lawyer had previously tested the accuracy of the tool on a smaller subset of documents by manually reviewing those documents, comparing then to the summaries produced by the tool, and finding the summaries accurate. Moreover, a lawyer's use of a GAI tool designed specifically for the practice of law or to perform a discrete legal task, such as generating ideas, may require less independent verification or review, particularly where a lawyer's prior experience with the GAI tool provides a reasonable basis for relying on its results.

While GAI may be used as a springboard or foundation for legal work—for example, by generating an analysis on which a lawyer bases legal advice, or by generating a draft from which a lawyer produces a legal document—lawyers may not abdicate their responsibilities by relying solely on a GAI tool to perform tasks that call for the exercise of professional judgment. For example, lawyers may not leave it to GAI tools alone to offer legal advice to clients, negotiate clients' claims, or perform other functions that require a lawyer's personal judgment or participation.[16] Competent representation presupposes that lawyers will exercise the requisite level of skill and judgment regarding all legal work. In short, regardless of the level of review the lawyer selects, the lawyer is fully responsible for the work on behalf of the client.

Emerging technologies may provide an output that is of distinctively higher quality than current GAI tools produce, or may enable lawyers to perform work markedly faster and more economically, eventually becoming ubiquitous in legal practice and establishing conventional expectations regarding lawyers' duty of competence.[17] Over time, other new technologies have become integrated into conventional legal practice in this manner.[18] For example, "a lawyer would have difficulty providing competent legal services in today's environment without knowing how

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[15] *See generally* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 08-451, at 1 (2008) [hereinafter ABA Formal Op. 08-451] (concluding that "[a] lawyer may outsource legal or nonlegal support services provided the lawyer remains ultimately responsible for rendering competent legal services to the client under Model Rule 1.1").

[16] *See* Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, *supra* note 4.

[17] *See, e.g.*, Sharon Bradley, *Rule 1.1 Duty of Competency and Internet Research: Benefits and Risks Associated with Relevant Technology* at 7 (2019), *available at* https://ssrn.com/abstract=3485055 ("View Model Rule 1.1 as elastic. It is expanding as legal technology solutions expand. The ever-changing shape of this rule makes clear that a lawyer cannot simply learn technology today and never again update their skills or knowledge.").

[18] *See, e.g.*, Smith v. Lewis, 530 P.2d 589, 595 (Cal. 1975) (stating that a lawyer is expected "to possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by *standard research techniques*") (emphasis added); Hagopian v. Justice Admin. Comm'n, 18 So. 3d 625, 642 (Fla. Dist. Ct. App. 2009) (observing that lawyers have "become expected to use computer-assisted legal research to ensure that their research is complete and up-to-date, but the costs of this service can be significant").

to use email or create an electronic document."[19] Similar claims might be made about other tools such as computerized legal research or internet searches.[20] As GAI tools continue to develop and become more widely available, it is conceivable that lawyers will eventually have to use them to competently complete certain tasks for clients.[21] But even in the absence of an expectation for lawyers to use GAI tools as a matter of course,[22] lawyers should become aware of the GAI tools relevant to their work so that they can make an informed decision, as a matter of professional judgment, whether to avail themselves of these tools or to conduct their work by other means.[23] As previously noted regarding the possibility of outsourcing certain work, "[t]here is no unique blueprint for the provision of competent legal services. Different lawyers may perform the same tasks through different means, all with the necessary 'legal knowledge, skill, thoroughness and preparation.'"[24] Ultimately, any informed decision about whether to employ a GAI tool must consider the client's interests and objectives.[25]

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[19] ABA Formal Op. 477R, *supra* note 6, at 3 (quoting ABA COMMISSION ON ETHICS 20/20 REPORT 105A (Aug. 2012)).

[20] *See, e.g.*, Bradley, *supra* note 17, at 3 ("Today no competent lawyer would rely solely upon a typewriter to draft a contract, brief, or memo. Typewriters are no longer part of 'methods and procedures' used by competent lawyers."); Lawrence Duncan MacLachlan, *Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers' Professional Responsibility to Research and Know the Law*, 13 GEO. J. LEGAL ETHICS 607, 608 (2000) ("The lawyer in the twenty-first century who does not effectively use the Internet for legal research may fall short of the minimal standards of professional competence and be potentially liable for malpractice"); Ellie Margolis, *Surfin' Safari—Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 110 (2007) ("While a lawyer's research methods reveal a great deal about the competence of the research, the method of research is ultimately a secondary inquiry, only engaged in when the results of that research process is judged inadequate. A lawyer who provides the court with adequate controlling authority is not going to be judged incompetent whether she found that authority in print, electronically, or by any other means."); Michael Thomas Murphy, *The Search for Clarity in an Attorney's Duty to Google*, 18 LEGAL COMM. & RHETORIC: JALWD 133, 133 (2021) ("This Duty to Google contemplates that certain readily available information on the public Internet about a legal matter is so easily accessible that it must be discovered, collected, and examined by an attorney, or else that attorney is acting unethically, committing malpractice, or both"); Michael Whiteman, *The Impact of the Internet and Other Electronic Sources on an Attorney's Duty of Competence Under the Rules of Professional Conduct*, 11 ALB. L.J. SCI. & TECH. 89, 91 (2000) ("Unless it can be shown that the use of electronic sources in legal research has become a standard technique, then lawyers who fail to use electronic sources will not be deemed unethical or negligent in his or her failure to use such tools.").

[21] *See* MODEL RULES R. 1.1 cmt. [5] (stating that "[c]ompetent handling of a particular matter includes . . . [the] use of methods and procedures meeting the standards of competent practitioners"); New York County Lawyers Ass'n Prof'l Ethics Comm. Op. 749, 2017 WL 11659554, at *3 (2017) (explaining that the duty of competence covers not only substantive knowledge in different areas of the law, but also the manner in which lawyers provide legal services to clients).

[22] The establishment of such an expectation would likely require an increased acceptance of GAI tools across the legal profession, a track record of reliable results from those platforms, the widespread availability of these technologies to lawyers from a cost or financial standpoint, and robust client demand for GAI tools as an efficiency or cost-cutting measure.

[23] Model Rule 1.5's prohibition on unreasonable fees, as well as market forces, may influence lawyers to use new technology in favor of slower or less efficient methods.

[24] ABA Formal Op. 08-451, *supra* note 15, at 2. *See also id.* ("Rule 1.1 does not require that tasks be accomplished in any special way. The rule requires only that the lawyer who is responsible to the client satisfies her obligation to render legal services competently.").

[25] MODEL RULES R. 1.2(a).

B. Confidentiality

A lawyer using GAI must be cognizant of the duty under Model Rule 1.6 to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent, disclosure is impliedly authorized to carry out the representation, or disclosure is permitted by an exception.[26] Model Rules 1.9(c) and 1.18(b) require lawyers to extend similar protections to former and prospective clients' information. Lawyers also must make "reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client."[27]

Generally, the nature and extent of the risk that information relating to a representation may be revealed depends on the facts. In considering whether information relating to any representation is adequately protected, lawyers must assess the likelihood of disclosure and unauthorized access, the sensitivity of the information,[28] the difficulty of implementing safeguards, and the extent to which safeguards negatively impact the lawyer's ability to represent the client.[29]

Before lawyers input information relating to the representation of a client into a GAI tool, they must evaluate the risks that the information will be disclosed to or accessed by others outside the firm. Lawyers must also evaluate the risk that the information will be disclosed to or accessed by others *inside* the firm who will not adequately protect the information from improper disclosure or use[30] because, for example, they are unaware of the source of the information and that it originated with a client of the firm. Because GAI tools now available differ in their ability to ensure that information relating to the representation is protected from impermissible disclosure and access, this risk analysis will be fact-driven and depend on the client, the matter, the task, and the GAI tool used to perform it.[31]

Self-learning GAI tools into which lawyers input information relating to the representation, by their very nature, raise the risk that information relating to one client's representation may be disclosed improperly,[32] even if the tool is used exclusively by lawyers at the same firm.[33] This can occur when information relating to one client's representation is input into the tool, then later revealed in response to prompts by lawyers working on other matters, who then share that output with other clients, file it with the court, or otherwise disclose it. In other words, the self-learning

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[26] MODEL RULES R. 1.6; MODEL RULES R. 1.6 cmt. [3].
[27] MODEL RULES R. 1.6(c).
[28] ABA Formal Op. 477R, *supra* note 6, at 1 (A lawyer "may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when … the nature of the information requires a higher degree of security.").
[29] MODEL RULES R. 1.6, cmt. [18].
[30] *See* MODEL RULES R. 1.8(b), which prohibits use of information relating to the representation of a client to the disadvantage of the client.
[31] *See* ABA Formal Op. 477R, *supra* note 6, at 4 (rejecting specific security measures to protect information relating to a client's representation and advising lawyers to adopt a fact-specific approach to data security).
[32] *See generally* State Bar of Cal. Standing Comm. on Prof'l Resp. & Conduct, PRACTICAL GUIDANCE FOR THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW (2024), *available at* https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf; Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, *supra* note 4.
[33] *See* Pa. & Philadelphia Joint Formal Opinion 2024-200, *supra* note 4, at 10 (noting risk that information relating to one representation may be used to inform work on another representation).

GAI tool may disclose information relating to the representation to persons outside the firm who are using the same GAI tool. Similarly, it may disclose information relating to the representation to persons in the firm (1) who either are prohibited from access to said information because of an ethical wall or (2) who could inadvertently use the information from one client to help another client, not understanding that the lawyer is revealing client confidences. Accordingly, because many of today's self-learning GAI tools are designed so that their output could lead directly or indirectly to the disclosure of information relating to the representation of a client, a client's informed consent is required prior to inputting information relating to the representation into such a GAI tool.[34]

When consent is required, it must be informed. For the consent to be informed, the client must have the lawyer's best judgment about why the GAI tool is being used, the extent of and specific information about the risk, including particulars about the kinds of client information that will be disclosed, the ways in which others might use the information against the client's interests, and a clear explanation of the GAI tool's benefits to the representation. Part of informed consent requires the lawyer to explain the extent of the risk that later users or beneficiaries of the GAI tool will have access to information relating to the representation. To obtain informed consent when using a GAI tool, merely adding general, boiler-plate provisions to engagement letters purporting to authorize the lawyer to use GAI is not sufficient.[35]

Because of the uncertainty surrounding GAI tools' ability to protect such information and the uncertainty about what happens to information both at input and output, it will be difficult to evaluate the risk that information relating to the representation will either be disclosed to or accessed by others inside the firm to whom it should not be disclosed as well as others outside the firm.[36] As a baseline, all lawyers should read and understand the Terms of Use, privacy policy, and related contractual terms and policies of any GAI tool they use to learn who has access to the information that the lawyer inputs into the tool or consult with a colleague or external expert who has read and analyzed those terms and policies.[37] Lawyers may need to consult with IT professionals or cyber security experts to fully understand these terms and policies as well as the manner in which GAI tools utilize information.

Today, there are uses of self-learning GAI tools in connection with a legal representation when client informed consent is not required because the lawyer will not be inputting information relating to the representation. As an example, if a lawyer is using the tool for idea generation in a manner that does not require inputting information relating to the representation, client informed consent would not be necessary.

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[34] This conclusion is based on the risks and capabilities of GAI tools as of the publication of this opinion. As the technology develops, the risks may change in ways that would alter our conclusion. *See* Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, *supra* note 4, at 2; W. Va. Lawyer Disciplinary Bd. Op. 24-01 (2024), *available at* http://www.wvodc.org/pdf/AILEO24-01.pdf.

[35] *See* W. Va. Lawyer Disciplinary Bd. Op. 24-01, *supra* note 34.

[36] Magesh et al. *supra* note 14, at 23 (describing some of the GAI tools available to lawyers as "difficult for lawyers to assess when it is safe to trust them. Official documentation does not clearly illustrate what they can do for lawyers and in which areas lawyers should exercise caution.")

[37] Stephanie Pacheco, *Three Considerations for Attorneys Using Generative AI,* BLOOMBERG LAW ANALYSIS (June 16, 2023, 4:00 pm), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-three-considerations-for-attorneys-using-generative-ai?context=search&index=7.

C. Communication

Where Model Rule 1.6 does not require disclosure and informed consent, the lawyer must separately consider whether other Model Rules, particularly Model Rule 1.4, require disclosing the use of a GAI tool in the representation.

Model Rule 1.4, which addresses lawyers' duty to communicate with their clients, builds on lawyers' legal obligations as fiduciaries, which include "the duty of an attorney to advise the client promptly whenever he has any information to give which it is important the client should receive."[38] Of particular relevance, Model Rule 1.4(a)(2) states that a lawyer shall "reasonably consult with the client about the means by which the client's objectives are to be accomplished." Additionally, Model Rule 1.4(b) obligates lawyers to explain matters "to the extent reasonably necessary to permit a client to make an informed decision regarding the representation." Comment [5] to Rule 1.4 explains, "the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." Considering these underlying principles, questions arise regarding whether and when lawyers might be required to disclose their use of GAI tools to clients pursuant to Rule 1.4.

The facts of each case will determine whether Model Rule 1.4 requires lawyers to disclose their GAI practices to clients or obtain their informed consent to use a particular GAI tool. Depending on the circumstances, client disclosure may be unnecessary.

Of course, lawyers must disclose their GAI practices if asked by a client how they conducted their work, or whether GAI technologies were employed in doing so, or if the client expressly requires disclosure under the terms of the engagement agreement or the client's outside counsel guidelines.[39] There are also situations where Model Rule 1.4 requires lawyers to discuss their use of GAI tools unprompted by the client.[40] For example, as discussed in the previous section, clients would need to be informed in advance, and to give informed consent, if the lawyer proposes to input information relating to the representation into the GAI tool.[41] Lawyers must also consult clients when the use of a GAI tool is relevant to the basis or reasonableness of a lawyer's fee.[42]

Client consultation about the use of a GAI tool is also necessary when its output will influence a significant decision in the representation,[43] such as when a lawyer relies on GAI

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[38] Baker v. Humphrey, 101 U.S. 494, 500 (1879).

[39] *See, e.g.*, MODEL RULES R. 1.4(a)(4) ("A lawyer shall . . . promptly comply with reasonable requests for information[.]").

[40] *See* MODEL RULES R. 1.4(a)(1) (requiring lawyers to "promptly inform the client of any decision or circumstance with respect to which the client's informed consent" is required by the rules of professional conduct).

[41] See section B for a discussion of confidentiality issues under Rule 1.6.

[42] See section F for a discussion of fee issues under Rule 1.5.

[43] Guidance may be found in ethics opinions requiring lawyers to disclose their use of temporary lawyers whose involvement is significant or otherwise material to the representation. *See, e.g.*, Va. State Bar Legal Ethics Op. 1850, 2010 WL 5545407, at *5 (2010) (acknowledging that "[t]here is little purpose to informing a client every time a lawyer outsources legal support services that are truly tangential, clerical, or administrative in nature, or even when basic legal research or writing is outsourced without any client confidences being revealed"); Cal. State Bar, Standing Comm. on Prof'l Resp. & Conduct Op. 2004-165, 2004 WL 3079030, at *2–3 (2004) (opining that a

technology to evaluate potential litigation outcomes or jury selection. A client would reasonably want to know whether, in providing advice or making important decisions about how to carry out the representation, the lawyer is exercising independent judgment or, in the alternative, is deferring to the output of a GAI tool. Or there may be situations where a client retains a lawyer based on the lawyer's particular skill and judgment, when the use of a GAI tool, without the client's knowledge, would violate the terms of the engagement agreement or the client's reasonable expectations regarding how the lawyer intends to accomplish the objectives of the representation.

It is not possible to catalogue every situation in which lawyers must inform clients about their use of GAI. Again, lawyers should consider whether the specific circumstances warrant client consultation about the use of a GAI tool, including the client's needs and expectations, the scope of the representation, and the sensitivity of the information involved. Potentially relevant considerations include the GAI tool's importance to a particular task, the significance of that task to the overall representation, how the GAI tool will process the client's information, and the extent to which knowledge of the lawyer's use of the GAI tool would affect the client's evaluation of or confidence in the lawyer's work.

Even when Rule 1.6 does not require informed consent and Rule 1.4 does not require a disclosure regarding the use of GAI, lawyers may tell clients how they employ GAI tools to assist in the delivery of legal services. Explaining this may serve the interest of effective client communication. The engagement agreement is a logical place to make such disclosures and to identify any client instructions on the use of GAI in the representation.[44]

D. Meritorious Claims and Contentions and Candor Toward the Tribunal

Lawyers using GAI in litigation have ethical responsibilities to the courts as well as to clients. Model Rules 3.1, 3.3, and 8.4(c) may be implicated by certain uses. Rule 3.1 states, in part, that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert and issue therein, unless there is a basis in law or fact for doing so that is not frivolous." Rule 3.3 makes it clear that lawyers cannot knowingly make any false statement of law or fact to a tribunal or fail to correct a material false statement of law or fact previously made to a tribunal.[45] Rule 8.4(c) provides that a

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lawyer must disclose the use of a temporary lawyer to a client where the temporary lawyer's use constitutes a "significant development" in the matter and listing relevant considerations); N.Y. State Bar Ass'n, Comm on Prof'l Ethics 715, at 7 (1999) (opining that "whether a law firm needs to disclose to the client and obtain client consent for the participation of a Contract lawyer depends upon whether client confidences will be disclosed to the lawyer, the degree of involvement of the lawyer in the matter, and the significance of the work done by the lawyer"); D.C. Bar Op. 284, at 4 (1988) (recommending client disclosure "whenever the proposed use of a temporary lawyer to perform work on the client's matter appears reasonably likely to be material to the representation or to affect the client's reasonable expectations"); Fla. State Bar Ass'n, Comm. on Prof'l Ethics Op. 88-12, 1988 WL 281590, at *2 (1988) (stating that disclosure of a temporary lawyer depends "on whether the client would likely consider the information material");.

[44] For a discussion of what client notice and informed consent under Rule 1.6 may require, see section B.

[45] MODEL RULES R. 3.3(a) reads: "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if

lawyer shall not engage in "conduct involving dishonesty, fraud, deceit or misrepresentation." Even an unintentional misstatement to a court can involve a misrepresentation under Rule 8.4(c). Therefore, output from a GAI tool must be carefully reviewed to ensure that the assertions made to the court are not false.

Issues that have arisen to date with lawyers' use of GAI outputs include citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments.[46]

Some courts have responded by requiring lawyers to disclose their use of GAI.[47] As a matter of competence, as previously discussed, lawyers should review for accuracy all GAI outputs. In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments.

E. Supervisory Responsibilities

Model Rules 5.1 and 5.3 address the ethical duties of lawyers charged with managerial and supervisory responsibilities and set forth those lawyers' responsibilities with regard to the firm, subordinate lawyers, and nonlawyers. Managerial lawyers must create effective measures to ensure that all lawyers in the firm conform to the rules of professional conduct,[48] and supervisory lawyers must supervise subordinate lawyers and nonlawyer assistants to ensure that subordinate lawyers and nonlawyer assistants conform to the rules.[49] These responsibilities have implications for the use of GAI tools by lawyers and nonlawyers.

Managerial lawyers must establish clear policies regarding the law firm's permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm's lawyers and nonlawyers comply with their professional obligations when using GAI tools.[50] Supervisory obligations also include ensuring that subordinate lawyers and nonlawyers are trained,[51] including in the ethical and practical use of the GAI tools relevant to their work as well as on risks associated with relevant GAI use.[52] Training could include the basics of GAI technology, the capabilities and limitations of the tools, ethical issues in use of GAI and best practices for secure data handling, privacy, and confidentiality.

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necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

[46] *See* DC Bar Op. 388 (2024).

[47] Lawyers should consult with the applicable court's local rules to ensure that they comply with those rules with respect to AI use. As noted in footnote 4, no one opinion could address every ethics issue presented when a lawyer uses GAI. For example, depending on the facts, issues relating to Model Rule 3.4(c) could be presented.

[48] *See* MODEL RULES R. 1.0(c) for the definition of firm.

[49] ABA Formal Op. 08-451, *supra* note 15.

[50] MODEL RULES R. 5.1.

[51] *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 467 (2014).

[52] *See generally*, MODEL RULES R. 1.1, cmt. [8]. One training suggestion is that all materials produced by GAI tools be marked as such when stored in any client or firm file so future users understand potential fallibility of the work.

Lawyers have additional supervisory obligations insofar as they rely on others outside the law firm to employ GAI tools in connection with the legal representation. Model Rule 5.3(b) imposes a duty on lawyers with direct supervisory authority over a nonlawyer to make "reasonable efforts to ensure that" the nonlawyer's conduct conforms with the professional obligations of the lawyer. Earlier opinions recognize that when outsourcing legal and nonlegal services to third-party providers, lawyers must ensure, for example, that the third party will do the work capably and protect the confidentiality of information relating to the representation.[53] These opinions note the importance of: reference checks and vendor credentials; understanding vendor's security policies and protocols; familiarity with vendor's hiring practices; using confidentiality agreements; understanding the vendor's conflicts check system to screen for adversity among firm clients; and the availability and accessibility of a legal forum for legal relief for violations of the vendor agreement. These concepts also apply to GAI providers and tools.

Earlier opinions regarding technological innovations and other innovations in legal practice are instructive when considering a lawyer's use of a GAI tool that requires the disclosure and storage of information relating to the representation.[54] In particular, opinions developed to address cloud computing and outsourcing of legal and nonlegal services suggest that lawyers should:

- ensure that the [GAI tool] is configured to preserve the confidentiality and security of information, that the obligation is enforceable, and that the lawyer will be notified in the event of a breach or service of process regarding production of client information;[55]
- investigate the [GAI tool's] reliability, security measures, and policies, including limitations on the [the tool's] liability;[56]
- determine whether the [GAI tool] retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information;[57] and
- understand the risk that [GAI tool servers] are subject to their own failures and may be an attractive target of cyber-attacks.[58]

F. Fees

Model Rule 1.5, which governs lawyers' fees and expenses, applies to representations in which a lawyer charges the client for the use of GAI. Rule 1.5(a) requires a lawyer's fees and expenses to be reasonable and includes a non-exclusive list of criteria for evaluating whether a fee

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[53] ABA Formal Op. 08-451, *supra* note 15; ABA Formal. Op. 477R, *supra* note 6.
[54] *See* ABA Formal Op. 08-451, *supra* note 15.
[55] Fla. Bar Advisory Op. 12-3 (2013).
[56] *Id.* citing Iowa State Bar Ass'n Comm. on Ethics & Practice Guidelines Op. 11-01 (2011) [hereinafter Iowa Ethics Opinion 11-01].
[57] Fla. Bar Advisory Op. 24-1, *supra* note 4; Fla. Bar Advisory Op. 12-3, *supra* note 55; Iowa Ethics Opinion 11-01, *supra* note 56.
[58] Fla. Bar Advisory Op. 12-3, *supra* note 55; *See generally* Melissa Heikkila, *Three Ways AI Chatbots are a Security Disaster*, MIT TECHNOLOGY REVIEW (Apr. 3, 2023), www.technologyreview.com/2023/04/03/1070893/three-ways-ai-chatbots-are-a-security-disaster/.

or expense is reasonable.[59] Rule 1.5(b) requires a lawyer to communicate to a client the basis on which the lawyer will charge for fees and expenses unless the client is a regularly represented client and the terms are not changing. The required information must be communicated before or within a reasonable time of commencing the representation, preferably in writing. Therefore, before charging the client for the use of the GAI tools or services, the lawyer must explain the basis for the charge, preferably in writing.

GAI tools may provide lawyers with a faster and more efficient way to render legal services to their clients, but lawyers who bill clients an hourly rate for time spent on a matter must bill for their actual time. ABA Formal Ethics Opinion 93-379 explained, "the lawyer who has agreed to bill on the basis of hours expended does not fulfill her ethical duty if she bills the client for more time than she has actually expended on the client's behalf."[60] If a lawyer uses a GAI tool to draft a pleading and expends 15 minutes to input the relevant information into the GAI program, the lawyer may charge for the 15 minutes as well as for the time the lawyer expends to review the resulting draft for accuracy and completeness. As further explained in Opinion 93-379, "If a lawyer has agreed to charge the client on [an hourly] basis and it turns out that the lawyer is particularly efficient in accomplishing a given result, it nonetheless will not be permissible to charge the client for more hours than were actually expended on the matter,"[61] because "[t]he client should only be charged a reasonable fee for the legal services performed."[62] The "goal should be solely to compensate the lawyer fully for time reasonably expended, an approach that if followed will not take advantage of the client."[63]

The factors set forth in Rule 1.5(a) also apply when evaluating the reasonableness of charges for GAI tools when the lawyer and client agree on a flat or contingent fee.[64] For example, if using a GAI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the GAI tool as when not using it. "A fee charged for which little or no work was performed is an unreasonable fee."[65]

The principles set forth in ABA Formal Opinion 93-379 also apply when a lawyer charges GAI work as an expense. Rule 1.5(a) requires that disbursements, out-of-pocket expenses, or additional charges be reasonable. Formal Opinion 93-379 explained that a lawyer may charge the

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[59] The listed considerations are (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

[60] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-379, at 6 (1993) [hereinafter ABA Formal Op. 93-379].

[61] *Id.*

[62] *Id.* at 5.

[63] *Id.*

[64] *See, e.g.*, *Williams Cos. v. Energy Transfer LP*, 2022 Del. Ch. LEXIS 207, 2022 WL 3650176 (Del. Ch. Aug. 25, 2022) (applying same principles to contingency fee).

[65] Att'y Grievance Comm'n v. Monfried, 794 A.2d 92, 103 (Md. 2002) (finding that a lawyer violated Rule 1.5 by charging a flat fee of $1,000 for which the lawyer did little or no work).

client for disbursements incurred in providing legal services to the client. For example, a lawyer typically may bill to the client the actual cost incurred in paying a court reporter to transcribe a deposition or the actual cost to travel to an out-of-town hearing.[66] Absent contrary disclosure to the client, the lawyer should not add a surcharge to the actual cost of such expenses and should pass along to the client any discounts the lawyer receives from a third-party provider.[67] At the same time, lawyers may not bill clients for general office overhead expenses including the routine costs of "maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities, and the like."[68] Formal Opinion 93-379 noted, "[i]n the absence of disclosure to a client in advance of the engagement to the contrary," such overhead should be "subsumed within" the lawyer's charges for professional services.[69]

In applying the principles set out in ABA Formal Ethics Opinion 93-379 to a lawyer's use of a GAI tool, lawyers should analyze the characteristics and uses of each GAI tool, because the types, uses, and cost of GAI tools and services vary significantly. To the extent a particular tool or service functions similarly to equipping and maintaining a legal practice, a lawyer should consider its cost to be overhead and not charge the client for its cost absent a contrary disclosure to the client in advance. For example, when a lawyer uses a GAI tool embedded in or added to the lawyer's word processing software to check grammar in documents the lawyer drafts, the cost of the tool should be considered to be overhead. In contrast, when a lawyer uses a third-party provider's GAI service to review thousands of voluminous contracts for a particular client and the provider charges the lawyer for using the tool on a per-use basis, it would ordinarily be reasonable for the lawyer to bill the client as an expense for the actual out-of-pocket expense incurred for using that tool.

As acknowledged in ABA Formal Opinion 93-379, perhaps the most difficult issue is determining how to charge clients for providing in-house services that are not required to be included in general office overhead and for which the lawyer seeks reimbursement. The opinion concluded that lawyers may pass on reasonable charges for "photocopying, computer research, . . . and similar items" rather than absorbing these expenses as part of the lawyers' overhead as many lawyers would do.[70] For example, a lawyer may agree with the client in advance on the specific rate for photocopying, such as $0.15 per page. Absent an advance agreement, the lawyer "is obliged to charge the client no more than the direct cost associated with the service (i.e., the actual cost of making a copy on the photocopy machine) plus a reasonable allocation of overhead expenses directly associated with the provision of the service (e.g., the salary of the photocopy machine operator)."[71]

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[66] ABA Formal Op. 93-379 at 7.
[67] *Id.* at 8.
[68] *Id.* at 7.
[69] *Id.*
[70] *Id.* at 8.
[71] *Id.* Opinion 93-379 also explained, "It is not appropriate for the Committee, in addressing ethical standards, to opine on the various accounting issues as to how one calculates direct cost and what may or may not be included in allocated overhead. These are questions which properly should be reserved for our colleagues in the accounting profession. Rather, it is the responsibility of the Committee to explain the principles it draws from the mandate of Model Rule 1.5's injunction that fees be reasonable. Any reasonable calculation of direct costs as well as any reasonable allocation of related overhead should pass ethical muster. On the other hand, in the absence of an agreement to the contrary, it is impermissible for a lawyer to create an additional source of profit for the law firm beyond that which is contained in the provision of professional services themselves. The lawyer's stock in trade is the sale of legal services, not photocopy paper, tuna fish sandwiches, computer time or messenger services." *Id.*

These same principles apply when a lawyer uses a proprietary, in-house GAI tool in rendering legal services to a client. A firm may have made a substantial investment in developing a GAI tool that is relatively unique and that enables the firm to perform certain work more quickly or effectively. The firm may agree in advance with the client about the specific rates to be charged for using a GAI tool, just as it would agree in advance on its legal fees. But not all in-house GAI tools are likely to be so special or costly to develop, and the firm may opt not to seek the client's agreement on expenses for using the technology. Absent an agreement, the firm may charge the client no more than the direct cost associated with the tool (if any) plus a reasonable allocation of expenses directly associated with providing the GAI tool, while providing appropriate disclosures to the client consistent with Formal Opinion 93-379. The lawyer must ensure that the amount charged is not duplicative of other charges to this or other clients.

Finally, on the issue of reasonable fees, in addition to the time lawyers spend using various GAI tools and services, lawyers also will expend time to gain knowledge about those tools and services. Rule 1.1 recognizes that "[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment [8] explains that "[t]o maintain the requisite knowledge and skill [to be competent], a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engaging in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."[72] Lawyers must remember that they may not charge clients for time necessitated by their own inexperience.[73] Therefore, a lawyer may not charge a client to learn about how to use a GAI tool or service that the lawyer will regularly use for clients because lawyers must maintain competence in the tools they use, including but not limited to GAI technology. However, if a client explicitly requests that a specific GAI tool be used in furtherance of the matter and the lawyer is not knowledgeable in using that tool, it may be appropriate for the lawyer to bill the client to gain the knowledge to use the tool effectively. Before billing the client, the lawyer and the client should agree upon any new billing practices or billing terms relating to the GAI tool and, preferably, memorialize the new agreement.

III. Conclusion

Lawyers using GAI tools have a duty of competence, including maintaining relevant technological competence, which requires an understanding of the evolving nature of GAI. In

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[72] MODEL RULES R. 1.1, cmt. [8] (emphasis added); *see also* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).

[73] Heavener v. Meyers, 158 F. Supp. 2d 1278 (E.D. Okla. 2001) (five hundred hours for straightforward Fourth Amendment excessive-force claim and nineteen hours for research on Eleventh Amendment defense indicated excessive billing due to counsel's inexperience); *In re* Poseidon Pools of Am., Inc., 180 B.R. 718 (Bankr. E.D.N.Y. 1995) (denying compensation for various document revisions; "we note that given the numerous times throughout the Final Application that Applicant requests fees for revising various documents, Applicant fails to negate the obvious possibility that such a plethora of revisions was necessitated by a level of competency less than that reflected by the Applicant's billing rates"); Att'y Grievance Comm'n v. Manger, 913 A.2d 1 (Md. 2006) ("While it may be appropriate to charge a client for case-specific research or familiarization with a unique issue involved in a case, general education or background research should not be charged to the client."); *In re* Hellerud, 714 N.W.2d 38 (N.D. 2006) (reduction in hours, fee refund of $5,651.24, and reprimand for lawyer unfamiliar with North Dakota probate work who charged too many hours at too high a rate for simple administration of cash estate; "it is counterintuitive to charge a higher hourly rate for knowing less about North Dakota law").

using GAI tools, lawyers also have other relevant ethical duties, such as those relating to confidentiality, communication with a client, meritorious claims and contentions, candor toward the tribunal, supervisory responsibilities regarding others in the law office using the technology and those outside the law office providing GAI services, and charging reasonable fees. With the ever-evolving use of technology by lawyers and courts, lawyers must be vigilant in complying with the Rules of Professional Conduct to ensure that lawyers are adhering to their ethical responsibilities and that clients are protected.

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Effective December 15, 2014.

Updated for all official releases through September 2025.

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Preface: Applicable to All Members

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0.100 Overview of the Code of Professional Conduct

.01 The AICPA Code of Professional Conduct (the code) begins with this preface, which applies to all *members* The term *member*, when used in part 1 of the code, applies to and means a *member* in *public practice*; when used in part 2 of the code, applies to and means a *member in business*; and when used in part 3 of the code, applies to and means all other *members*, such as those *members* who are retired or unemployed.

.02 A *member* may have multiple roles, such as a *member in business* and a *member* in *public practice*. In such circumstances, the *member* should consult all applicable parts of the code and apply the most restrictive provisions. [No prior reference: new content]

Effective Date

.03 Effective December 15, 2014.

0.100.010 Principles and Rules of Conduct

.01 The AICPA membership adopted the Code of Professional Conduct (the code) to provide guidance and rules to all *members* in the performance of their professional responsibilities. The code consists of principles and rules as well as *interpretations* and other guidance which are discussed in 0.100.020. The principles provide the framework for the rules that govern the performance of their professional responsibilities.

.02 The AICPA bylaws require that *members* adhere to the rules of the code. Compliance with the rules depends primarily on *members'* understanding and voluntary actions; secondarily on reinforcement by peers and public opinion; and ultimately on disciplinary proceedings, when necessary, against *members* who fail to comply with the rules. *Members* must be prepared to justify departures from these rules.

0.100.020 Interpretations and Other Guidance

.01 *Interpretations* of the rules of conduct are adopted after exposure to the membership, state societies, state boards, and other interested parties. The *interpretations* of the rules of conduct, "Definitions" [0.400], "Application of the AICPA Code" [0.200.020], and "Citations" [0.200.030], provide guidelines about the scope and application of the rules but are not intended to limit such scope or application. A *member* who departs from the *interpretations* shall have the burden of justifying such departure in any disciplinary hearing. *Interpretations* that existed before the adoption of the code on January 12, 1988, will remain in effect until further action is deemed necessary by the appropriate senior committee.

.02 A *member* should also consult the following, if applicable:

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- The ethical requirements of the *member's* state CPA society and authoritative regulatory bodies such as state board(s) of accountancy
- The Securities and Exchange Commission (SEC)
- The Public Company Accounting Oversight Board (PCAOB)
- The Government Accountability Office (GAO)
- The Department of Labor (DOL)
- Federal, state and local taxing authorities
- Any other body that regulates a *member* who performs *professional services* for an entity when the *member* or entity is subject to the rules and regulations of such regulatory body. [Prior reference: Introduction]

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0.200 Structure and Application of the AICPA Code

0.200.010 Structure of the AICPA Code

.01 A variety of topics appear in parts 1–3 of the code. When applicable, topics are aligned with the relevant rule or rules of conduct. Topics may be further divided into subtopics, and some subtopics include one or more sections. Topics, subtopics, and sections interpret the rules of conduct (see "Interpretations and Other Guidance" [0.100.020]).

.02 Defined terms (see "Definitions" [0.400]) as well as the plurals and possessives thereof, are shown in *italics* throughout the code. When a defined term is used in the code but is not shown in *italics*, the definition in 0.400 should not be applied. [No prior reference: new content]

Effective Date

.03 Effective December 15, 2014.

0.200.020 Application of the AICPA Code

.01 The Code of Professional Conduct (the code) was originally adopted on January 12, 1988, and was periodically revised through June 1, 2014. On June 1, 2014, the AICPA issued a codification of the code's principles, rules, *interpretations* and rulings (revised code). The revised code will be effective December 15, 2014, excluding the Conceptual Framework sections. These sections, "Conceptual Framework for Members in Public Practice" [1.000.010] and "Conceptual Framework for Members in Business" [2.000.010], will be effective December 15, 2015. *Members* are permitted to implement the revised code prior to December 15, 2014, but a *member* may not implement the relevant Conceptual Framework prior to implementing the entire revised code. Revisions made subsequent to June 1, 2014, are identified in appendix C, the Revision History Table, which notes the month and year of the change, the effective date of the change, the purpose for the revision, and when possible, a link to the marked revision of the content that appeared in the *Journal of Accountancy*. If the *interpretation* or paragraph does not contain a specific effective date or a reference to the revision history table, then the content was effective prior to June 1, 2014. [No prior reference: new content.]

.02 When used in the preface of the code, the term *member* includes *members*, associate *members*, and affiliate *members*, as well as international associates of the AICPA.

.03 The rules of conduct apply to all *professional services* performed, except

a. when the wording of the rule indicates otherwise.

b. that a *member* who is practicing outside the United States will not be considered in violation of a particular rule for departing from any of the rules stated herein, as long

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as the *member's* conduct is in accordance with the rules of the organized accounting profession in the country in which he or she is practicing. However, when a *member* is associated with *financial statements* under circumstances that would lead the reader to assume that practices of the United States were followed, the *member* must comply with the "Compliance With Standards Rule" [1.310.001 for *members* in *public practice* and 2.310.001 for *members in business*] and the "Accounting Principles Rule" [1.320.001 for *members* in *public practice* and 2.320.001 for *members in business*].

c. that a *member* who is a member of a group engagement team (see the clarified Statement on Auditing Standards *Special Considerations — Audits of Group Financial Statements [Including the Work of Component Auditors*] [AICPA, *Professional Standards*, AU-C sec. 600A]) will not be considered in violation of a particular rule if a foreign component auditor (accountant) departed from any of the rules stated herein with respect to the audit or review of group *financial statements* or other *attest engagement*, as long as the foreign component auditor's (accountant's) conduct, at a minimum, is in accordance with the ethics and *independence* requirements set forth in the International Ethics Standards Board for Accountants' (IESBA's) Code of Ethics for Professional Accountants, and the members of the group engagement team are in compliance with the rules stated therein.

d. that the *independence* of the *member's firm* will not be considered *impaired* if another *firm* or entity located outside the United States that is within the *member firm's network* departed from any of the rules stated herein, as long as the other *firm* or entity's conduct, at a minimum, is in accordance with the *independence* requirements set forth in the IESBA's Code of Ethics for Professional Accountants.

.04 A *member* shall not knowingly permit a person whom the *member* has the authority or capacity to control to carry out on his or her behalf, either with or without compensation, acts that, if carried out by the *member*, would place the *member* in violation of the rules. Further, a *member* may be held responsible for the acts of all persons associated with the *member* in *public practice* whom the *member* has the authority or capacity to control.

.05 The *independence* of a *member* in *public practice* or a *covered member* may be *impaired* with respect to a *client* as the result of the actions or relationships, as described in the "Independence Rule" [1.200.001] and its *interpretations*, of certain persons or entities whom the *member* or *covered member* does not have the authority or capacity to control. Even if the *member* is unable to control the actions or relationships of such persons or entities, the *member's independence* may still be *impaired*. [Prior reference: ET section 91]

.06 The "Breach of an Independence Interpretation" [1.298.010] of the "Independence Rule" [1.200.001] contains guidance with which a *member* should comply if the *member* identifies a breach of an *independence interpretation* of the code. If a *member* identifies a breach of any other provision of this code, the *member* should evaluate the significance of the breach and its effect on the *member's* ability to comply with the rules of the code. The *member* should take whatever actions may be available, as soon as practicable, to satisfactorily address the consequences of the breach. The *member* should determine whether to report the breach, for example, to those who may have been affected by the breach, a professional body, relevant

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regulator, or oversight authority. In making the evaluation and in determining what actions should be taken, the *member* should exercise professional judgment and take into account whether a reasonable and informed third party, weighing the significance of the breach, the action to be taken, and all the specific facts and circumstances available to the *member* at that time, would be likely to conclude that the *member* is able to comply with the rules of the code. A *member's* determination that the *member* has satisfactorily addressed the consequences of the breach will not, however, preclude an investigation or enforcement action concerning the underlying breach of the code and the *member* should be prepared to justify such determination.

Effective Date

.07 Paragraph .01 is effective December 15, 2014. Paragraph .06 is effective March 31, 2016, with early implementation allowed.

[See Revision History Table.]

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

0.200.030 Citations

Prior ET Sections

.01 The code was revised by codifying the principles, rules, *interpretations*, and rulings. These revisions were effective December 15, 2014. To facilitate implementation of the revised code, the prior ET references from the professional standards of the AICPA are included in Appendix D, "Mapping Document," and in bracketed text at the end of standards, where applicable.

[See Revision History Table.]

Numeric Citations

.02 The numbering system for the code is "ET section X.XXX.XXX." The single digit that begins the citation identifies the part wherein the content resides. Accordingly, content from the preface begins with the single digit 0.XXX.XXX, whereas content for part 1 begins with a 1.XXX.XXX, part 2 with 2.XXX.XXX, and part 3 with a 3.XXX.XXX.

.03 Next are two sets of three digit numbers that identify the topics and, when applicable, subtopics or sections. When a topic, subtopic or section appears in two or more parts of the code, the same number is used. For example, the "Acts Discreditable Rule" appears in

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parts 1, 2, and 3 and the citations for this rule are 1.400.001, 2.400.001, and 3.400.001, respectively. Accordingly, the two sets of three digit numbers remain the same with only the first digit changing.

.04 When only two digits appear, those digits represent the paragraph number. For example, the complete citation for this paragraph would be 0.200.030.04.

.05 All bracketed section references, such as [0.200.030.04] refer to sections within the Code of Professional Conduct. [No prior reference: new content]

Effective Date

.06 Effective December 15, 2014.

0.200.040 Transition Provisions

.01 The text of the transition provisions in effect as of May 31, 2013, has not been codified because the transition provisions apply to a limited number of situations. Nevertheless, these transition provisions are still authoritative. The texts of these transition provisions are available at www.aicpa-cima.com/resources/download/transition-provisions. [No prior reference: new content]

Effective Date

.02 Effective December 15, 2014.

0.200.050 Drafting Conventions

.01 The code utilizes certain drafting conventions to enhance the clarity of the *interpretations* and definitions. For example, when the term "should consider" is used in connection with a specified procedure or action, consideration of the procedure or action by the *member* is presumptively required. Actual performance of the action or procedure is up to the *member*, based upon the outcome of the *member's* consideration and the *member's* professional judgment. Other drafting conventions used in the code include use of the terms "consider," "evaluate," and "determine," as follows:

a. "Consider" is used when the *member* is required to think about several matters.

b. "Evaluate" is used when the *member* has to assess and weigh the significance of a matter.

c. "Determine" is used when the *member* has to come to a conclusion and make a decision on a matter. [No prior reference: new content]

Effective Date

.02 Effective December 15, 2014.

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A complete nonauthoritative guide, *Drafting Guide—Drafting Guidelines for Integrating the Conceptual Framework and Drafting Conventions and Style Guidance*, is also available at www.aicpa-cima.com/resources/download/drafting-guide.

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0.300 Principles of Professional Conduct

0.300.010 Preamble

.01 Membership in the American Institute of Certified Public Accountants is voluntary. By accepting membership, a *member* assumes an obligation of self-discipline above and beyond the requirements of laws and regulations.

.02 These Principles of the Code of Professional Conduct of the American Institute of Certified Public Accountants express the profession's recognition of its responsibilities to the public, to *clients*, and to colleagues. They guide *members* in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. The Principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage. [Prior reference: ET section 51]

0.300.020 Responsibilities

.01 *Responsibilities principle.* In carrying out their responsibilities as professionals, *members* should exercise sensitive professional and moral judgments in all their activities.

.02 As professionals, *members* perform an essential role in society. Consistent with that role, *members* of the American Institute of Certified Public Accountants have responsibilities to all those who use their *professional services*. *Members* also have a continuing responsibility to cooperate with each other to improve the art of accounting, maintain the public's confidence, and carry out the profession's special responsibilities for self-governance. The collective efforts of all *members* are required to maintain and enhance the traditions of the profession. [Prior reference: ET section 52]

0.300.030 The Public Interest

.01 *The public interest principle. Members* should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate a commitment to professionalism.

.02 A distinguishing mark of a profession is acceptance of its responsibility to the public. The accounting profession's public consists of *clients*, credit grantors, governments, employers, investors, the business and financial community, and others who rely on the objectivity and integrity of *members* to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on *members*. The public interest is defined as the collective well-being of the community of people and institutions that the profession serves.

.03 In discharging their professional responsibilities, *members* may encounter conflicting pressures from each of those groups. In resolving those conflicts, *members* should act with integrity, guided by the precept that when *members* fulfill their responsibility to the public, *clients'* and employers' interests are best served.

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.04 Those who rely on *members* expect them to discharge their responsibilities with integrity, objectivity, due professional care, and a genuine interest in serving the public. They are expected to provide quality services, enter into fee arrangements, and offer a range of services—all in a manner that demonstrates a level of professionalism consistent with these Principles of the Code of Professional Conduct.

.05 All who accept membership in the American Institute of Certified Public Accountants commit themselves to honor the public trust. In return for the faith that the public reposes in them, *members* should seek to continually demonstrate their dedication to professional excellence. [Prior reference: ET section 53]

0.300.040 Integrity

.01 *Integrity principle.* To maintain and broaden public confidence, *members* should perform all professional responsibilities with the highest sense of integrity.

.02 Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a *member* must ultimately test all decisions.

.03 Integrity requires a *member* to be, among other things, honest and candid within the constraints of *client* confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and honest difference of opinion; it cannot accommodate deceit or subordination of principle.

.04 Integrity is measured in terms of what is right and just. In the absence of specific rules, standards, or guidance or in the face of conflicting opinions, a *member* should test decisions and deeds by asking: "Am I doing what a person of integrity would do? Have I retained my integrity?" Integrity requires a *member* to observe both the form and the spirit of technical and ethical standards; circumvention of those standards constitutes subordination of judgment.

.05 Integrity also requires a *member* to observe the principles of objectivity and *independence* and of due care. [Prior reference: ET section 54]

0.300.050 Objectivity and Independence

.01 *Objectivity and independence principle.* A *member* should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. A *member* in *public practice* should be independent in fact and appearance when providing auditing and other attestation services.

.02 Objectivity is a state of mind, a quality that lends value to a *member's* services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. *Independence* precludes relationships that may appear to *impair* a *member's* objectivity in rendering attestation services.

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.03 *Members* often serve multiple interests in many different capacities and must demonstrate their objectivity in varying circumstances. *Members* in *public practice* render attest, tax, and management advisory services. Other *members* prepare *financial statements* in the employment of others, perform internal auditing services, and serve in financial and management capacities in industry, education, and government. They also educate and train those who aspire to admission into the profession. Regardless of service or capacity, *members* should protect the integrity of their work, maintain objectivity, and avoid any subordination of their judgment.

.04 For a *member* in *public practice*, the maintenance of objectivity and *independence* requires a continuing assessment of *client* relationships and public responsibility. Such a *member* who provides auditing and other attestation services should be independent in fact and appearance. In providing all other services, a *member* should maintain objectivity and avoid conflicts of interest.

.05 Although *members* not in *public practice* cannot maintain the appearance of *independence*, they nevertheless have the responsibility to maintain objectivity in rendering *professional services*. *Members* employed by others to prepare *financial statements* or to perform auditing, tax, or consulting services are charged with the same responsibility for objectivity as *members* in *public practice* and must be scrupulous in their application of generally accepted accounting principles and candid in all their dealings with *members* in *public practice*. [Prior reference: ET section 55]

0.300.060 Due Care

.01 *Due care principle.* A *member* should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the *member's* ability.

.02 The quest for excellence is the essence of due care. Due care requires a *member* to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform *professional services* to the best of a *member's* ability, with concern for the best interest of those for whom the services are performed, and consistent with the profession's responsibility to the public.

.03 Competence is derived from a synthesis of education and experience. It begins with a mastery of the common body of knowledge required for designation as a certified public accountant. The maintenance of competence requires a commitment to learning and professional improvement that must continue throughout a *member's* professional life. It is a *member's* individual responsibility. In all engagements and in all responsibilities, each *member* should undertake to achieve a level of competence that will assure that the quality of the *member's* services meets the high level of professionalism required by these Principles.

.04 Competence represents the attainment and maintenance of a level of understanding and knowledge that enables a *member* to render services with facility and acumen. It also establishes the limitations of a *member's* capabilities by dictating that consultation or referral may be required when a professional engagement exceeds the personal competence

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of a *member* or a *member's firm*. Each *member* is responsible for assessing his or her own competence of evaluating whether education, experience, and judgment are adequate for the responsibility to be assumed.

.05 *Members* should be diligent in discharging responsibilities to *clients*, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards.

.06 Due care requires a *member* to plan and supervise adequately any professional activity for which he or she is responsible. [Prior reference: ET section 56]

0.300.070 Scope and Nature of Services

.01 *Scope and nature of services principle.* A *member* in *public practice* should observe the Principles of the Code of Professional Conduct in determining the scope and nature of services to be provided.

.02 The public interest aspect of *members'* services requires that such services be consistent with acceptable professional behavior for *members*. Integrity requires that service and the public trust not be subordinated to personal gain and advantage. Objectivity and *independence* require that *members* be free from conflicts of interest in discharging professional responsibilities. Due care requires that services be provided with competence and diligence.

.03 Each of these Principles should be considered by *members* in determining whether or not to provide specific services in individual circumstances. In some instances, they may represent an overall constraint on the nonaudit services that might be offered to a specific *client*. No hard-and-fast rules can be developed to help *members* reach these judgments, but they must be satisfied that they are meeting the spirit of the Principles in this regard.

.04 In order to accomplish this, *members* should

a. Practice in *firms* that have in place internal quality control procedures to ensure that services are competently delivered and adequately supervised.

b. Determine, in their individual judgments, whether the scope and nature of other services provided to an audit *client* would create a conflict of interest in the performance of the audit function for that *client*.

c. Assess, in their individual judgments, whether an activity is consistent with their role as professionals. [Prior reference: ET section 57]

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0.400 Definitions

Pursuant to its authority under the bylaws (paragraph .01 [3.6.2.2] of BL section 360, *Committees* [AICPA, *Professional Standards*]) to interpret the code, the Professional Ethics Executive Committee has issued the following definitions of terms appearing in the code.

.01 Acceptable level. In connection with *independence*, an acceptable level is a level at which a reasonable and informed third party who is aware of the relevant information would be expected to conclude that a *member's independence* is not *impaired*. When used in connection with any rule but the "Independence Rule" [1.200.001] an acceptable level is a level at which a reasonable and informed third party who is aware of the relevant information would be expected to conclude that a *member's* compliance with the rules is not compromised. [Prior reference: ET section 100-1 and new content]

Effective Date

When this definition is used in connection with any rule but the "Independence Rule" [1.200.001] it is effective December 15, 2014.

.02 Affiliate. The following entities are affiliates of a *financial statement attest client*:

a. An entity (for example, subsidiary, partnership, or limited liability company [LLC]) that a *financial statement attest client* can *control*.

b. An entity in which a *financial statement attest client* or an entity *controlled* by the *financial statement attest client* has a *direct financial interest* that gives the *financial statement attest client significant influence* over such entity and that is material to the *financial statement attest client*.

c. An entity (for example, parent, partnership, or LLC) that *controls* a *financial statement attest client* when the *financial statement attest client* is material to such entity.

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d. An entity with a *direct financial interest* in the *financial statement attest client* when that entity has *significant influence* over the *financial statement attest client*, and the interest in the *financial statement attest client* is material to such entity.

e. A sister entity of a *financial statement attest client* if the *financial statement attest client* and sister entity are each material to the entity that *controls* both.

f. A trustee that is deemed to *control* a trust *financial statement attest client* that is not an investment company.

g. The sponsor of a single employer employee benefit plan *financial statement attest client*.

h. Any entity, such as a union, participating employer, or a group association of employers, that has *significant influence* over a multiemployer employee benefit plan *financial statement attest client* and the plan is material to such entity.

i. The participating employer that is the plan administrator of a multiple employer employee benefit plan *financial statement attest client*.

j. A single or multiple employer employee benefit plan sponsored by either a *financial statement attest client* or an entity *controlled* by the *financial statement attest client*. All participating employers of a multiple employer employee benefit plan are considered sponsors of the plan.

k. A multiemployer employee benefit plan when a *financial statement attest client* or entity *controlled* by the *financial statement attest client* has *significant influence* over the plan and the plan is material to the *financial statement attest client*.

l. An investment adviser, a general partner, or a trustee of an investment company *financial statement attest client* (fund) if the fund is material to the investment adviser, general partner, or trustee that is deemed to have either *control* or *significant influence* over the fund. When considering materiality, *members* should consider investments in, and fees received from, the fund.

See the "State and Local Government Client Affiliates" interpretation [1.224.020] for guidance related to identifying affiliates of a *financial statement attest client* that is a state and

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local government. [Prior reference: paragraph .20 of ET section 101]

[See Revision History Table.]

Nonauthoritative questions and answers related to the application of the independence rules to affiliates of employee benefit plans are available. See Ethics Questions & Answers section 120Ethics Questions & Answers section 120, *Affiliates*.

A nonauthoritative question and answer related to the application of the affiliate definition to individuals is available. See Ethics Questions & Answers section 120.19Ethics Questions & Answers section 120.19, "Application of the Affiliate Definition and Client Affiliates Interpretation to Individuals."

.03 Attest client.

A person or entity with respect to which an *attest engagement* is performed. [No prior reference: new content]

If the person or entity that engages a *member* or *member's firm* (member) to perform *professional services* (engaging entity) is not also the attest client, the *member* should refer to the "Client Affiliate" interpretation [1.224.010] to determine whether the engaging entity is an *affiliate* from which the *member* should be independent. However, because *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] and the "Conflicts of Interest for Members in Public Practice" interpretation [1.110.010] may still exist with respect to the engaging entity, *members* should comply with this rule and interpretation.

See paragraph .06 of the "Client Affiliate" interpretation [1.224.010] for acquisitions and business combinations that involve a *financial statement attest client*.

See paragraph .03 of the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] for *independence* guidance related to a *member* in a government audit organization that performs an *attest engagement* with respect to the government entity.

Effective Date

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This definition is effective December 15, 2014.

[See Revision History Table.]

.04 Attest engagement.

An engagement that requires *independence*, as set forth in the AICPA Statements on Auditing Standards (SASs), Statements on Standards for Accounting and Review Services (SSARSs), and Statements on Standards for Attestation Engagements (SSAEs). [Prior reference: paragraph .01 of ET section 92]

.05 Attest engagement team.

Those individuals participating in the *attest engagement*, including those who perform concurring and engagement quality reviews. The attest engagement team includes all employees and contractors retained by the *firm* who participate in the *attest engagement*, regardless of their functional classification (for example, audit, tax, or management consulting services). The attest engagement team excludes specialists, as discussed in AU-C section 620, *Using the Work of an Auditor's Specialist* (AICPA, *Professional Standards*), and individuals who perform only routine clerical functions, such as word processing and photocopying. [Prior reference: paragraph .02 of ET section 92]

A nonauthoritative question and answer related to the application of the independence rules to engagement quality reviewers is available. See Ethics Questions & Answers section 100.06Ethics Questions & Answers section 100.06, "An Engagement Quality Reviewer (EQR) is Considered a Member of the Engagement Team for Independence Purposes."

.06 Beneficially owned, beneficial ownership interest.

Describes a *financial interest* providing an individual or entity the right to some or all of the underlying benefits of ownership. These benefits include the authority to direct the voting or disposition of the interest or to receive the economic benefits of the ownership of the interest. [Prior reference: paragraph .17 of ET section 101]

.07 Client.

Any person or entity, other than the *member's* employer that engages a *member* or *member's firm* to perform *professional services* (engaging entity) and also, a person or entity with respect to which a *member* or *member's firm* performs *professional services* (subject entity). When the engaging entity

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and the subject entity are different, while there is only one engagement, they are separate clients.

[Prior reference: paragraph .03 of ET section 92]

See paragraph .03 of the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] for *independence* guidance related to a *member* in a government audit organization that performs an *attest engagement* with respect to the government entity.

[See Revision History Table.]

.08 Close relative. A parent, sibling, or nondependent child. [Prior reference: paragraph .04 of ET section 92]

.09 Compliance audit. An *attest engagement* that is performed in accordance with AU-C section 935, *Compliance Audits*. When a compliance audit performed in accordance with AU-C section 935 also includes separate reporting under AU-C section 725, *Supplementary Information in Relation to the Financial Statements as a Whole*, or 805, *Special Considerations — Audits of Single Financial Statements and Specific Elements, Accounts, or Items of a Financial Statement*, this definition also extends to the audit of the schedule or statement that will accompany the AU-C section 935 report.

A compliance audit may include multiple *compliance audit clients*. For example, multiple *compliance audit clients* may have amounts included in a schedule of expenditures of federal awards in a compliance audit performed in accordance with Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

Effective Date

This definition is effective for compliance audits commencing after June 15, 2023. Early implementation is allowed.

Nonauthoritative questions and answers regarding compliance audits are available in Ethics Questions and Answers section 10Ethics Questions and Answers section 10, *Definitions*.

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.10 Compliance audit client.

An entity with respect to which a *compliance audit* is performed. *Members* should apply the "Independence Rule" [1.200.001] and related *interpretations* applicable to an *attest client* to the compliance audit client.

To the extent the *compliance audit* includes amounts from multiple entities in a schedule or statement, an entity would not be considered a compliance audit client, and, therefore, the "Independence Rule" [1.200.001] and related *interpretations* would not apply with respect to an entity, if that entity

a. is not subject to compliance audit procedures and

b. includes amounts in the schedule or statement that are trivial and clearly inconsequential to the schedule or statement as a whole.

When an entity meets the definition of a compliance audit client, the "Client Affiliates" interpretation [1.224.010] and the "State and Local Government Client Affiliates" interpretation [1.224.020] do not apply.

Effective Date

This definition is effective for compliance audits commencing after June 15, 2023. Early implementation is allowed.

A nonauthoritative question and answer regarding compliance audit clients is available. See Ethics Questions & Answers section 10.02 Ethics Questions and Answers section 10.02, "Multiple Compliance Audit Clients."

.11 Confidential client information.

Any information obtained from the *client* that is not available to the public. Information that is available to the public includes, but is not limited to, information

a. in a book, periodical, newspaper, or similar publication;

b. in a *client* document that has been released by the *client* to the public or that has otherwise become a matter of public knowledge;

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c. on publicly accessible websites, databases, online discussion forums, or other electronic media by which members of the public can access the information;

d. released or disclosed by the *client* or other third parties in media interviews, speeches, testimony in a public forum, presentations made at seminars or trade association meetings, panel discussions, earnings press release calls, investor calls, analyst sessions, investor conference presentations, or a similar public forum;

e. maintained by, or filed with, regulatory or governmental bodies that is available to the public; or

f. obtained from other public sources.

Unless the particular *client* information is available to the public, such information should be considered confidential client information. *Members* are advised that federal, state, or local statutes, rules, or regulations concerning confidentiality of *client* information may be more restrictive than the requirements in the code. [Prior reference: paragraph .05 of ET section 92]

.12 Control (s) (led). As used in FASB *Accounting Standards Codification* (ASC) 810, *Consolidation*. When used in the "Client Affiliates" interpretation [1.224.010] of the "Independence Rule" [1.200.001], control depends upon the entity in question. For example, when used for not-for-profit entities, control is as used in FASB ASC 958-805-20; for commercial entities, control is as used in FASB ASC 810. [Prior reference: numerous ET sections; also see "Breakdown of the Term Control in the Code" at www.aicpa-cima.com/resources/download/use-of-the-term-control]

.13 Council. The AICPA Council. [Prior reference: paragraph .06 of ET section 92]

.14 Covered member. All of the following:

a. an individual on the *attest engagement team*.

b. an *individual in a position to influence the attest engagement*.

c. a *partner*, *partner equivalent*, or *manager* who provides 10 or more hours of nonattest services to the *attest client* within any fiscal year. Designation as covered member ends on the later of (i) the date that the *firm* signs the report on the *financial statements* for the fiscal year

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during which those services were provided or (ii) the date he or she no longer expects to provide 10 or more hours of nonattest services to the *attest client* on a recurring basis.

d. a *partner* or *partner equivalent* in the *office* in which the lead *attest engagement partner* or *partner equivalent* primarily practices in connection with the *attest engagement*.

e. the *firm*, including the *firm's* employee benefit plans.

f. an entity whose operating, financial, or accounting policies can be *controlled* by any of the individuals or entities described in items *a–e* or two or more such individuals or entities if they act together. [Prior reference: paragraph .07 of ET section 92]

Effective Date

The addition of *partner equivalents* to this definition is effective for engagements covering periods beginning on or after December 15, 2014.

.15 Direct financial interest.

A *financial interest* that is

a. owned directly by an individual or entity, including those managed on a discretionary basis by others.

b. under the control of an individual or entity, including those managed on a discretionary basis by others.

c. *beneficially owned* through an investment vehicle, estate, trust, or other intermediary when the beneficiary

   i. controls the intermediary or

   ii. has the authority to supervise or participate in the intermediary's investment decisions.

When used in this definition, the term control includes situations in which the *covered member* has the ability to exercise such control, either individually or acting together with his or her *firm* or other *partners* or professional employees of his or her *firm*. [Prior reference: paragraph .17 of ET section 101]

.16 Employing organization.

Any entity that employs the *member* or engages the *member* on a contractual or volunteer basis in an executive, a staff, a governance, an advisory, or an administrative capacity to provide *professional services*. [No prior reference: new content]

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Effective Date

This definition is effective December 15, 2014.

.17 Financial interest.

An ownership interest in an equity or a debt security issued by an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest. [Prior reference: paragraph .17 of ET section 101]

.18 Financial statement attest client.

An entity whose *financial statements* are audited, reviewed, or compiled when the *member's* compilation report does not disclose a lack of *independence*.

This definition does not include a *compliance audit client*. Therefore, the "Client Affiliates" interpretation [1.224.010] and the "State and Local Government Client Affiliates" interpretation [1.224.020] would not apply with respect to the *compliance audit client*.

[See Revision History Table.]

A nonauthoritative question and answer regarding compliance audit clients is available. See Ethics Questions & Answers section 10.02Ethics Questions & Answers section 10.02, "Multiple Compliance Audit Clients."

19. Financial statements.

A presentation of financial data, including accompanying disclosures, if any, intended to communicate an entity's economic resources or obligations, or both, at a point in time or the changes therein for a period of time, in accordance with the applicable financial reporting framework. Incidental financial data to support recommendations to a *client* or in (*a*) documents for which the reporting is governed by SSAEs and (*b*) tax returns and supporting schedules do not, for this purpose, constitute financial statements. The statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion. [Prior reference: paragraph .10 of ET section 92]

.20 Firm.

A form of organization permitted by law or regulation whose characteristics conform to resolutions of the *Council* and that is engaged in *public practice*. A firm includes the individual *partners* thereof, except for purposes of applying the

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"Independence Rule" [1.200.001] and related *interpretations*. For purposes of applying the "Independence Rule," a firm includes a *network firm* when the engagement is either a *financial statement* audit or review engagement and the audit or review report is not restricted, as set forth in the AICPA SASs and SSARSs (AICPA, *Professional Standards*). [Prior reference: paragraph .11 of ET section 92]

.21 Immediate family. A spouse, spousal equivalent, or dependent (regardless of whether the dependent is related). [Prior reference: paragraph .13 of ET section 92]

.22 Impair(ed)(ing). In connection with *independence*, to effectively extinguish *independence*. When a *member's independence* is impaired, the *member* is not independent. [Prior reference: paragraph .09 of ET section 100-1]

.23 Independence. Consists of two elements, defined as follows:

a. Independence of mind is the state of mind that permits a *member* to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism.

b. Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party who has knowledge of all relevant information, including the *safeguards* applied, to reasonably conclude that the integrity, objectivity, or professional skepticism of a *firm* or *member* of the *attest engagement team* is compromised.

This definition should not be interpreted as an absolute. For example, the phrase "without being affected by influences that compromise professional judgment" is not intended to convey that the *member* must be free of any and all influences that might compromise objective judgment. Instead, the *member* should determine whether such influences, if present, create a *threat* that is not at an *acceptable level* that a *member* would not act with integrity and exercise objectivity and professional skepticism in the conduct of a particular engagement or would be perceived as not being able to do so by a reasonable and informed third party with knowledge of all relevant information. [Prior reference: paragraphs .06–.08 of ET section 100-1]

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.24 Indirect financial interest.

A *financial interest beneficially owned* through an investment vehicle, an estate, a trust, or an other intermediary when the beneficiary neither controls the intermediary nor has the authority to supervise or participate in the intermediary's investment decisions. When used in this definition, control includes situations in which the *covered member* has the ability to exercise such control, either individually or acting together with his or her *firm* or other *partners* or professional employees of his or her *firm*. [Prior reference: paragraph .17 of ET section 101]

.25 Individual in a position to influence the attest engagement.

One who

a. evaluates the performance or recommends the compensation of the *attest engagement partner*;

b. directly supervises or manages the *attest engagement partner*, including all successively senior levels above that individual through the *firm's* chief executive;

c. consults with the *attest engagement team* regarding technical or industry-related issues specific to the *attest engagement*; or

d. participates in or oversees, at all successively senior levels, the *firm's* system of quality management with respect to the specific *attest engagement*.

[Prior reference: paragraph .14 of ET section 92]

.26 Institute.

The AICPA. [Prior reference: paragraph .15 of ET section 92]

.27 Interpretation.

Pronouncements issued by the division of professional ethics to provide guidelines concerning the scope and application of the rules of conduct. [Prior reference: paragraph .16 of ET section 92]

.28 Joint closely held investment.

An investment in an entity or a property by the *member* and the *attest client* (or the *attest client's* officers or directors or any owner who has the ability to exercise *significant influence* over the *attest client*) that enables them to *control* the entity or property. [Prior reference: paragraph .17 of ET section 92]

[See Revision History Table.]

.29 Key position.

A position in which an individual has

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a. primary responsibility for significant accounting functions that support material components of the *financial statements*;

b. primary responsibility for the preparation of the *financial statements*; or

c. the ability to exercise influence over the contents of the *financial statements*, including when the individual is a member of the board of directors or similar governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

For purposes of *attest engagements* not involving *financial statements*, a key position is one in which an individual is primarily responsible for, or able to influence, the subject matter of the *attest engagement*, as previously described. [Prior reference: paragraph .18 of ET section 92]

[See Revision History Table.]

.30 Lending institution.

An entity that, as part of its normal business operations, makes *loans*. This definition is not meant to include an organization that might schedule payment for services for a *client* over a period of time. Examples of such entities are banks, credit unions, certain retailers, and insurance and finance companies. For example, for automobile leases addressed by the "Loans and Leases With Lending Institutions" interpretation [1.260.020] of the "Independence Rule" [1.200.001], an entity is considered a lending institution if it leases automobiles as part of its normal business operations. [Prior reference: paragraph .09 of ET section 92]

Effective Date

This revised definition is effective December 15, 2014.

.31 Loan.

A contractual obligation to pay or right to receive money on demand or on a fixed or determinable date and includes a stated or implied rate of return to the lender. For purposes of this definition, loans include, among other things, a guarantee of a loan, a letter of credit, a line of credit, or a loan commitment. However, for purposes of this definition, a loan would not include debt securities (which are considered a *financial interest*) or lease arrangements. [Prior reference: paragraph .19 of ET section 92]

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Effective Date

This revised definition is effective December 15, 2014.

.32 Manager. A professional employee of the *firm* who has continuing responsibility for the planning and supervision of engagements for specified *clients*. [Prior reference: paragraph .20 of ET section 92]

.33 Member. A member, associate member, affiliate member, or international associate of the AICPA. When the term member is used in part 1 of the code, it means a member in *public practice*; when used in part 2 of the code, it means a *member in business*; and when used in part 3 of the code, it means all other members. [Prior reference: paragraph .21 of ET section 92]

.34 Member(s) in business. A *member* who is employed or engaged on a contractual or volunteer basis in a(n) executive, staff, governance, advisory, or administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, and regulatory or professional bodies. This does not include a *member* engaged in *public practice*. [Prior reference: paragraph .22 of ET section 92]

.35 Network. For purposes of the "Network and Network Firms" interpretation [1.220.010] of the "Independence Rule" [1.200.001], a network is an association of entities that includes one or more *firms* that (*a*) cooperate for the purpose of enhancing the *firms'* capabilities to provide *professional services* and (*b*) share one or more of the following characteristics:

a. The use of a common brand name, including common initials, as part of the *firm* name

b. Common *control* among the *firms* through ownership, management, or other means

c. Profits or costs, excluding costs of operating the association; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the *firm*

d. A common business strategy that involves ongoing collaboration amongst the *firms* whereby the *firms* are responsible for implementing the association's strategy and are held accountable for performance pursuant to that strategy

e. A significant part of professional resources

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f. Common quality management policies and procedures that *firms* are required to implement and that are monitored by the association

A network may comprise a subset of entities within an association only if that subset of entities cooperates and shares one or more of the characteristics set forth in the preceding list. [Prior reference: paragraph .23 of ET section 92]

.36 Network firm. A *firm* or other entity that belongs to a *network*. This includes any entity (including another *firm*) that the network firm, by itself or through one or more of its owners, *controls*, is *controlled* by, or is under common *control* with. [Prior reference: paragraph .24 of ET section 92]

.37 Normal lending procedures, terms, and requirements. In connection with a *covered member's loan* from a *lending institution*, lending procedures, terms, and requirements that are reasonably comparable with those relating to *loans* of a similar character committed to other borrowers during the period in which the *loan* to the *covered member* is committed. Accordingly, in making such comparison and evaluating whether a *loan* was made under normal lending procedures, terms, and requirements, the *covered member* should consider all the circumstances under which the *loan* was granted, including the following:

a. The amount of the *loan* in relation to the value of the collateral pledged as security and the credit standing of the *covered member*

b. Repayment terms

c. Interest rate, including points

d. Closing costs

e. General availability of such *loans* to the public

Related prohibitions that may be more restrictive are prescribed by certain state and federal agencies having regulatory authority over such *lending institutions*. Broker-dealers, for example, are subject to regulation by the SEC. [Prior reference: paragraph .25 of ET section 92]

.38 Office. A reasonably distinct subgroup within a *firm*, whether constituted by formal organization or informal practice, in which personnel who make up the subgroup generally serve the same group of *clients* or work on the same categories of matters. Substance should govern the office classification.

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For example, the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location. [Prior reference: paragraph .26 of ET section 92]

.39 Partner.

A proprietor, a shareholder, an equity or a nonequity partner, or any individual who assumes the risks and benefits of *firm* ownership or is otherwise held out by the *firm* to be the equivalent of any of the aforementioned. [Prior reference: paragraph .27 of ET section 92]

.40 Partner equivalent.

A professional employee who is not a *partner* of the *firm* but who either

a. has the ultimate responsibility for the conduct of an *attest engagement*, including the authority to sign or affix the *firm's* name to an attest report or issue, or authorize others to issue, an attest report on behalf of the *firm* without *partner* approval; or

b. has the authority to bind the *firm* to conduct an *attest engagement* without *partner* approval. For example, the professional employee has the authority to sign or affix the *firm's* name to an *attest engagement* letter or contract to conduct an *attest engagement* without *partner* approval.

Firms may use different titles to refer to professional employees with this authority, although a title is not determinative of a partner equivalent. For purposes of this definition, *partner* approval does not include any *partner* approvals that are part of the *firm's* normal approval and engagement quality review procedures applicable to a *partner*.

This definition is solely for the purpose of applying the "Independence Rule" [1.200.001] and its *interpretations* and should not be used or relied upon in any other context, including the determination of whether the partner equivalent is an owner of the *firm*. [Prior reference: paragraph .28 of ET section 92.]

Effective Date

This definition is effective for engagements covering periods beginning on or after December 15, 2014.

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.41 Period of the professional engagement.

The period begins when a *member* either signs an initial engagement letter or other agreement to perform attest services or begins to perform an *attest engagement*, whichever is earlier. The period lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification, either by the *member* or *client*, of the termination of the professional relationship or by the issuance of a report, whichever is later. Accordingly, the period does not end with the issuance of a report and recommence with the beginning of the following year's *attest engagement*. [Prior reference: paragraph .29 of ET section 92]

[See Revision History Table.]

.42 Professional services.

Include all services requiring accountancy or related skills that are performed by a *member* for a *client*, an employer, or on a volunteer basis. These services include, but are not limited to accounting, audit and other attest services, tax, bookkeeping, management consulting, financial management, corporate governance, personal financial planning, business valuation, litigation support, educational, and those services for which standards are promulgated by bodies designated by *Council*. [Prior reference: paragraph .31 of ET section 92]

.43 Public interest entity.

An entity is a *public interest entity* when it falls within any one of the following categories:

a. A *publicly traded entity* whose auditor is subject to provisions of Regulation S-X, SEC Rule 2-01, "Qualifications of Accountants," that are applicable to auditors of issuers.

b. An entity one of whose main functions is to take deposits from the public

    i. that meets the annual audit requirement imposed by Part 363 of the FDIC's regulations (12 CFR 363, *Annual Independent Audits and Reporting Requirements*) and

    ii. that has consolidated total assets of $1 billion or more as of the beginning of the fiscal year.

c. An entity one of whose main functions is to provide insurance to the public

    i. that is subject to the National Association of Insurance Commissioners Annual Financial

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Reporting Model Regulation (Model Audit Rule) and

ii. that has $500 million or more in annual direct written and assumed premiums.

d. An investment company, other than an insurance company product, that is registered with the SEC pursuant to the Investment Company Act of 1940 and the Securities Act of 1933.

When a *member* performs a financial statement audit subject to the regulatory requirements described in (*a*)–(*d*), a *member* should comply with the applicable *independence* requirements as required by the "Governmental Bodies, Commissions, or Other Regulatory Agencies" interpretation [1.400.050] of the "Acts Discreditable Rule" [1.400.001]. [Prior reference: paragraph .20 of ET section 100-1]

A nonauthoritative basis-for-conclusion document summarizes considerations that were deemed significant in the development of this definition.

.44 Public practice. Consists of the performance of *professional services* for a *client* by a *member* or *member's firm*. [Prior reference: paragraph .30 of ET section 92]

.45 Publicly traded entity. An entity that issues financial instruments that are transferable and traded through a publicly accessible market mechanism, including through listing on a stock exchange. When an entity is required to file a registration statement with the SEC, the entity will be considered a publicly traded entity when the registration statement becomes effective.

A nonauthoritative basis-for-conclusion document summarizes considerations that were deemed significant in the development of this definition.

Effective Date

This definition is effective December 15, 2023.

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[See Revision History Table.]

.46 Safeguards. Actions or other measures that may eliminate a *threat* or reduce a *threat* to an *acceptable level*. [Prior reference: paragraph .20 of ET section 100-1]

.47 Share-based compensation arrangements. As defined in the FASB ASC glossary under the term share-based payment arrangements. [Prior reference: paragraph .02 ET section 101]

.48 Significant influence. As defined in FASB ASC 323-10-15. [Prior reference: paragraph .32 of ET section 92]

.49 Simultaneously employed or associated. When a *partner* or professional employee of the *member's firm* serves as a member of *those charged with governance* or as an employee of an *attest client* during the *period of the professional engagement*. This includes contractual or volunteer positions at the *attest client*.

Effective Date

This definition is effective September 15, 2026.

[See Revision History Table.]

.49 Source documents. The documents upon which evidence of an accounting transaction are initially recorded. Source documents are often followed by the creation of many additional records and reports that do not, however, qualify as initial recordings. Examples of source documents are purchase orders, payroll time cards, and customer orders. [Prior reference: footnote 17 in paragraph .05 of ET section 101]

.50 Third-party service provider. All of the following:

a. An entity that the *member* does not *control*, individually or collectively with his or her *firm* or with *members* of his or her *firm*.

b. An individual not employed by the *member* who assists the *member* in providing *professional services* to *clients* (for example, bookkeeping, tax return preparation, consulting, or attest services, including related clerical and data entry functions). [Prior reference: paragraphs .224–.225 of ET section 191, .023–.024 of ET section 291, and .001–.002 of ET section 391]

.51 Those charged with governance. The person(s) or organization(s) (for example, a corporate trustee) with responsibility for overseeing the strategic

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direction of the entity and the obligations related to the accountability of the entity. This includes overseeing the financial reporting process. Those charged with governance may include management personnel (for example, executive members of a governance board or an owner-manager).

When an *interpretation* requires communicating with those charged with governance, the *member* should determine the appropriate person(s) within the entity's governance structure with whom to communicate, based on the nature and importance of the particular circumstances and matter to be communicated. If the *member* communicates with a subgroup of those charged with governance (for example, an audit committee or an individual), the *member* should determine whether communication with all of those charged with governance is also necessary, so that they are adequately informed. [Prior reference: paragraph .33 of ET section 92]

Effective Date

This definition is effective April 30, 2014.

.52 Threat(s).

In connection with *independence*, threats are relationships or circumstances that could *impair independence*. In connection with any rule but the "Independence Rule" [1.200.001], threats are relationships or circumstances that could compromise a *member's* compliance with the rules. [Prior reference: paragraph .10 of ET section 100-1]

Effective Date

When this definition is used in connection with any rule but the "Independence Rule" it is effective December 15, 2014.

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0.500 Nonauthoritative Guidance

.01 The code is the only authoritative source of AICPA ethics rules and *interpretations*. The staff of the Professional Ethics Division has issued nonauthoritative guidance to assist *members* and others in their implementation of the code. Such guidance does not amend or override the code. Further, the guidance is not meant to be exhaustive and does not establish best practices, set standards, or serve as official pronouncements of the AICPA. These documents were not approved in accordance with normal due process, which requires proposed changes to be exposed to the public and requires consideration of *members'* and others' comments.

.02 References to relevant nonauthoritative guidance, when available, are provided throughout the code in boxed text at the end of the applicable *interpretation*. [No prior reference: new content]

Effective Date

.03 Effective December 15, 2014.

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0.600 New, Revised, and Pending Interpretations and Other Guidance

0.600.010 New and Revised Interpretations and Other Guidance

.01 Periodically, new or revised authoritative ethics *interpretations* and other guidance are issued. Publication of the text of a new or revised pronouncement or a notice with a link to the text of a new or revised authoritative *interpretation* and other guidance in the *Journal of Accountancy* constitutes notice to *members*. Hence, the effective date of the *interpretation* and other guidance is the last day of the month in which the pronouncement or notice is published in the *Journal of Accountancy*, unless otherwise noted. The Professional Ethics Division takes into consideration the time that would have been reasonable for the *member* to comply with the pronouncement. This section lists the citation and title of any new or revised *interpretation* or other guidance for a period of 12 months after its effective date. When an *interpretation* or other guidance is not yet effective, it will appear as a pending *interpretation* or other guidance (see "Pending Interpretations and Other Guidance" [0.600.020]).

- Revised interpretation "Section 529 Plans" [1.240.070]. Added March 2025. Effective May 31, 2025.
- New definition "publicly traded entity" [0.400.45] Added December 2023. Effective December 15, 2023.
- Revised definition "public interest entity" [0.400.43] Added December 2023. Effective December 15, 2024.
- Determining Fees for an Attest Engagement [1.230.030] Added September 2023. Effective January 1, 2025.
- Fee Dependency [1.230.040] Added September 2023. Effective January 1, 2025.
- Conceptual Framework for Independence [1.210.010 par. .16*c* and .18*d*] Revised September 2023. Effective January 1, 2025.
- Client Affiliates [1.224.010 par. .02*c* and .02*g*] Revised September 2023. Effective January 1, 2025.

Effective Date

.02 Paragraph .01, excluding the bulleted text, is effective December 15, 2014.

0.600.020 Pending Interpretations and Other Guidance

.01 Periodically, new or revised authoritative ethics *interpretations* and other guidance are issued. This section lists the titles and citations of any pending new or revised *interpretations* or other guidance until they are effective and notes whether early application

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is permitted or encouraged. Once the *interpretation* or other guidance becomes effective, it will appear under the “New and Revised Interpretation and Other Guidance” section of the preface [0.600.010].

- New definition "Simultaneously employed or associated" [0.400.49] Added September 2025. Effective September 15, 2026.)
- Replaced interpretation "Simultaneous Employment or Association With an Attest Client," [1.275.005] Added September 2025. Effective September 15, 2026.
- Conforming changes to the following interpretations related to simultaneous employment or association with an attest client:
  - "Conceptual Framework for Independence" [1.210.010 par. .15]
  - "Client Affiliates" [1.224.010 par. .02]
  - "Considering Employment or Association With an Attest Client" [1.279.010 par. .03]
  - "Member of a Social Club" [1.280.010 par. .02]

  Revised September 2025. Effective September 15, 2026.
- "Executive or Employee Recruiting" [1.295.135] Revised December 2024. Effective January 1, 2026, with early implementation allowed.

Effective Date

.02 Paragraph .01, excluding the bulleted text, is effective December 15, 2014.

0.600.030 Temporary Enforcement Policies

.01 Periodically the Professional Ethics Executive Committee (PEEC) may publicly agree not to take enforcement action in certain circumstances and may issue a temporary enforcement policy. This section sets forth any temporary enforcement policies that are in effect.

.02 [Rescinded December 31, 2022.]

.03 Temporary policy statement of the AICPA Professional Ethics Executive Committee related to the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] and the Uniformed Services Employment and Reemployment Rights Act (USERRA) and parallel state statutes.

> USERRA and parallel state statutes provide certain employment protections to individuals who serve, may serve, or have served in the armed services. On November 16, 2021, PEEC agreed it will consider a *member* or *member's* firm to be in compliance with the code if the *member* or *member's* firm employs individuals who serve in federal or state armed services and provides attest services to the armed services, as long as the individual is not in a *key position* with the armed services *attest client*, is not in a position to

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influence the *attest engagement* and is not on the *attest engagement team*. This temporary enforcement policy will be effective until PEEC rescinds it. [Adopted November 16, 2021]

Effective Date

.04 Paragraph .01 is effective December 21, 2020.

[See Revision History Table.]

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0.700 Deleted Interpretations and Other Guidance

.01 The following interpretations and other guidance were deleted from the code during the 10 years prior to the 2014 edition:

- Definition of *holding out* (ET sec. 92 par. .12) (Deleted March 2013, effective May 31, 2013)
- Ethics Ruling No. 65, "Use of the CPA Designation by Member Not in Public Practice" (ET sec. 191 par. .130) (Deleted March 2013, effective May 31, 2013)
- Ethics Ruling No. 38, "CPA Title, Controller of Bank" (ET sec. 591 par. .075–.076) (Deleted March 2013, effective May 31, 2013)
- Ethics Ruling No. 78, "Letterhead: Lawyer-CPA" (ET sec. 591 par. .155–.156) (Deleted March 2013, effective May 31, 2013)
- Ethics Ruling No. 134, "Association of Accountants Not Partners" (ET sec. 591 par. .267–.268) (Deleted August 2012)
- Ethics Ruling No. 74, "Audits, Reviews, or Compilations and a Lack of Independence" (ET sec. 191 par. .148–.149) (Deleted April 2012).
- Ethics Ruling No. 135, "Association of Firms Not Partners" (ET sec. 591 par. .269–.270) (Deleted April 2012).
- Interpretation No. 101-8, "Effect on Independence of Financial Interests in Nonclients Having Investor or Investee Relationships With a Covered Member's Client" (ET sec. 101 par. .10) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***).
- Ethics Ruling No. 9, "Member as Representative of Creditor's Committee" (ET sec. 191 par. .017–.018) (Deleted November 2011)
- Ethics Ruling No. 10, "Member as Legislator" (ET sec. 191 par. .019–.020) (Deleted November 2011)
- Ethics Ruling No. 12, "Member as Trustee of Charitable Foundation" (ET sec. 191 par. .023–.024) (Deleted November 2011)
- Ethics Ruling No. 16, "Member on Board of Directors of Nonprofit Social Club" (ET sec. 191 par. .031–.032) (Deleted November 2011)
- Ethics Ruling No. 19, "Member on Deferred Compensation Committee" (ET sec. 191 par. .037–.038) (Deleted November 2011)
- Ethics Ruling No. 21, "Member as Director and Auditor of an Entity's Profit Sharing and Retirement Trust" (ET sec. 191 par. .041–.042) (Deleted November 2011.

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Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18)

- Ethics Ruling No. 29, "Member as Bondholder" (ET sec. 191 par. .057–.058) (Deleted November 2011)
- Ethics Ruling No. 38, "Member as Co-Fiduciary With Client Bank" (ET sec. 191 par. .075–.076) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 48, "Faculty Member as Auditor of a Student Fund" (ET sec. 191 par. .095–.096) (Deleted November 2011)
- Ethics Ruling No. 60, "Employee Benefit Plans—Member's Relationships With Participating Employer," (ET sec. 191 par. .119–.120) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 69, "Investment With a General Partner" (ET sec. 191 par. .138–.139) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 81, "Member's Investment in a Limited Partnership" (ET sec. 191 par. .162–.163) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 98, "Member's Loan From a Nonclient Subsidiary or Parent of an Attest Client" (ET sec. 191 par. .196–.197) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 103, "Attest Report on Internal Controls" (ET sec. 191 par. .206–.207) (Deleted November 2011)
- Ethics Ruling No. 106, "Member Has Significant Influence Over an Entity That Has Significant Influence Over a Client" (ET sec. 191 par. .212–.213) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 111, "Employee Benefit Plan Sponsored by Client" (ET sec. 191 par. .222–.223) (Deleted November 2011. ***Reestablished and effective October 31, 2012 until the earlier of January 1, 2014, or adoption of Interpretation 101-18***)
- Ethics Ruling No. 11, "Applicability of Rule 203 to Members Performing Litigation Support Services" (ET sec. 291 par. .021–.022) (Deleted November 2011)
- Ethics Ruling No. 2, "Fees: Collection of Notes Issued in Payment" (ET sec. 591 par. .003–.004) (Deleted November 2011)
- Ethics Ruling No. 33, "Course Instructor" (ET sec. 591 par. .065–.066) (Deleted November 2011)

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- Ethics Ruling No. 108, "Member Interviewed by the Press" (ET sec. 591 par. .215–.216) (Deleted November 2011)
- Ethics Ruling No. 117, "Consumer Credit Company Director" (ET sec. 591 par. .233–.234) (Deleted November 2011)
- Ethics Ruling No. 140, "Political Election" (ET sec. 591 par. .279–.280) (Deleted November 2011)
- Ethics Ruling No. 144, "Title: Partnership Roster" (ET sec. 591 par. .287–.288) (Deleted November 2011)
- Ethics Ruling No. 176, "Member's Association With Newsletters and Publications" (ET sec. 591 par. .351–.352) (Deleted November 2011)
- Ethics Ruling No. 177, "Data Processing: Billing Services" (ET sec. 591 par. .353–.354) (Deleted November 2011)
- Ethics Ruling No. 179, "Practice of Public Accounting Under Name of Association or Group" (ET sec. 591 par. .357–.358) (Deleted November 2011)
- Ethics Ruling No. 101, "Client advocacy and Expert Witness Services" (ET sec. 191 par. .202–.203) (Deleted July 2007)
- Ethics Ruling No. 182, "Termination of Engagement Prior to Completion" (ET sec. 591 par. .363–.364) (Deleted April 2006).
- Ethics Ruling No. 1, "Acceptance of a Gift" (ET sec. 191 par. .001–.002) (Deleted January 2006).
- Ethics Ruling No. 35, "Stockholder in Mutual Funds" (ET sec. 191 par. .069–.070) (Deleted December 2005).
- Ethics Ruling No. 36, "Participant in Investment Club" (ET sec. 191 par. .071–.072) (Deleted December 2005).
- Ethics Ruling No. 79, "Member's Investment in a Partnership That Invests in Client" (ET sec. 191 par. .158–.159) (Deleted December 2005).
- Ethics Ruling No. 109, "Member's Investment in Financial Services Products that Invest in Clients" (ET sec. 191 par. .218–.219) (Deleted December 2005).
- Ethics Ruling No. 66, "Member's Retirement or Savings Plan Has Financial Interest in Client" (ET sec. 191 par. .132–.133) (Deleted December 2005).
- Ethics Ruling No. 68, "Blind Trust" (ET sec. 191 par. .136–.137) (Deleted December 2005).

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Part 1

Members in Public Practice

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1.000 Introduction

.01 Part 1 of the Code of Professional Conduct (the code) applies to *members* in *public practice*. Accordingly, when the term *member* is used in part 1 of the code, the requirements apply only to *members* in *public practice*. When a *member* in *public practice* is also a *member in business* (for example, serves as a member of an entity's board of directors), the *member* should also consult part 2 of the code, which applies to a *member in business*.

.02 Government auditors within a government audit organization who audit federal, state, or local governments or component units thereof, that are structurally located within the government audit organization, are considered in *public practice* with respect to those entities provided the head of the government audit organization meets at least one of the following criteria:

a. Is directly elected by voters of the government entity with respect to which attest engagements are performed

b. Is appointed by a legislative body and is subject to removal by a legislative body

c. Is appointed by someone other than the legislative body, as long as the appointment is confirmed by the legislative body and removal is subject to oversight or approval by the legislative body

[No prior reference: new content]

Effective Date

.03 Effective December 15, 2014.

[See Revision History Table.]

1.000.010 Conceptual Framework for Members in Public Practice

Introduction

.01 *Members* may encounter various relationships or circumstances that create *threats* to the *member's* compliance with the rules. The rules and *interpretations* seek to address many situations; however, they cannot address all relationships or circumstances that may arise. Thus, in the absence of an *interpretation* that addresses a particular relationship or circumstance, a *member* should evaluate whether that relationship or circumstance would lead a reasonable and informed third party who is aware of the relevant information to conclude that there is a *threat* to the *member's* compliance with the rules that is not at an *acceptable level*. When making that evaluation, the *member* should apply the conceptual framework approach as outlined in this interpretation.

.02 The code specifies that in some circumstances no *safeguards* can reduce a *threat* to an *acceptable level*. For example, the code specifies that a *member* may not subordinate the

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member's professional judgment to others without violating the "Integrity and Objectivity Rule" [1.100.001]. A *member* may not use the conceptual framework to overcome this prohibition or any other prohibition or requirement in the code.

.03 The "Conceptual Framework for Independence" interpretation [1.210.010] of the "Independence Rule" [1.200.001] provides authoritative guidance that *members* should use when making decisions on *independence* matters that are not explicitly addressed by the "Independence Rule" and its *interpretations*.

Definitions Used in Applying the Conceptual Framework

.04 Acceptable level. A level at which a reasonable and informed third party who is aware of the relevant information would be expected to conclude that a *member's* compliance with the rules is not compromised.

.05 Safeguards. Actions or other measures that may eliminate a *threat* or reduce a *threat* to an *acceptable level*.

.06 Threats. Relationships or circumstances that could compromise a *member's* compliance with the rules.

Conceptual Framework Approach

.07 Under the conceptual framework approach, *members* should identify *threats* to compliance with the rules and evaluate the significance of those *threats*. *Members* should evaluate identified *threats* both individually and in the aggregate because *threats* can have a cumulative effect on a *member's* compliance with the rules. *Members* should perform three main steps in applying the conceptual framework approach:

a. *Identify threats*. The relationships or circumstances that a *member* encounters in various engagements and work assignments will often create different *threats* to complying with the rules. When a *member* encounters a relationship or circumstance that is not specifically addressed by a rule or an *interpretation*, under this approach, the *member* should determine whether the relationship or circumstance creates one or more *threats*, such as those identified in paragraphs .10–.16 that follow. The existence of a *threat* does not mean that the *member* is in violation of the rules; however, the *member* should evaluate the significance of the *threat*.

b. *Evaluate the significance of a threat*. In evaluating the significance of an identified *threat*, the *member* should determine whether a *threat* is at an *acceptable level*. A *threat* is at an *acceptable level* when a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the *threat* would not compromise the *member's* compliance with the rules. *Members* should consider both qualitative and quantitative factors when evaluating the significance of a *threat*, including the extent to which existing *safeguards* already reduce the *threat* to an *acceptable level*. If the *member* evaluates the *threat* and concludes that a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the *threat* does not compromise a *member's* compliance with the

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rules, the *threat* is at an *acceptable level*, and the *member* is not required to evaluate the *threat* any further under this conceptual framework approach.

c. *Identify and apply safeguards*. If, in evaluating the significance of an identified *threat*, the *member* concludes that the *threat* is not at an *acceptable level*, the *member* should apply *safeguards* to eliminate the *threat* or reduce it to an *acceptable level*. The *member* should apply judgment in determining the nature of the *safeguards* to be applied because the effectiveness of *safeguards* will vary, depending on the circumstances. When identifying appropriate *safeguards* to apply, one *safeguard* may eliminate or reduce multiple *threats*. In some cases, the *member* should apply multiple *safeguards* to eliminate or reduce one *threat* to an *acceptable level*. In other cases, an identified *threat* may be so significant that no *safeguards* will eliminate the *threat* or reduce it to an *acceptable level*, or the *member* will be unable to implement effective *safeguards*. Under such circumstances, providing the specific *professional services* would compromise the *member's* compliance with the rules, and the *member* should determine whether to decline or discontinue the *professional services* or resign from the engagement.

Threats

.08 Many *threats* fall into one or more of the following seven broad categories: adverse interest, advocacy, familiarity, management participation, self-interest, self-review, and undue influence.

.09 Examples of *threats* associated with a specific relationship or circumstance are identified in the *interpretations* of the code. Paragraphs .10–.16 of this section define and provide examples, which are not all inclusive, of each of these *threat* categories.

.10 Adverse interest threat. The *threat* that a *member* will not act with objectivity because the *member's* interests are opposed to the *client's* interests. Examples of adverse interest *threats* include the following:

a. The *client* has expressed an intention to commence litigation against the *member*.

b. A *client* or officer, director, or significant shareholder of the *client* participates in litigation against the *firm*.

c. A subrogee asserts a claim against the *firm* for recovery of insurance payments made to the *client*.

d. A class action lawsuit is filed against the *client* and its officers and directors and the *firm* and its professional accountants.

.11 Advocacy threat. The *threat* that a *member* will promote a *client's* interests or position to the point that his or her objectivity or *independence* is compromised. Examples of advocacy *threats* include the following:

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a. A *member* provides forensic accounting services to a *client* in litigation or a dispute with third parties.

b. A *firm* acts as an investment adviser for an officer or director of a *client* with the ability to affect decision-making, or an individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *client*.

c. A *firm* underwrites or promotes a *client's* shares.

d. A *firm* acts as a registered agent for a *client*.

e. A *member* endorses a *client's* services or products.

.12 Familiarity threat. The *threat* that, due to a long or close relationship with a *client*, a *member* will become too sympathetic to the *client's* interests or too accepting of the *client's* work or product. Examples of familiarity *threats* include the following:

a. A *member's immediate family* or *close relative* is employed by the *client*.

b. A *member's* close friend is employed by the *client*.

c. A former *partner* or professional employee joins the *client* in a *key position* and has knowledge of the *firm's* policies and practices for the *professional services* engagement.

d. Senior personnel have a long association with a *client*.

e. A *member* has a significant close business relationship with an officer or a director of a *client* with the ability to affect decision-making, or an individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *client*.

Nonauthoritative questions and answers regarding long association of senior personnel of the engagement team are available. See Ethics Questions & Answers (Q&A) sections 100.04–.05Ethics Questions & Answers (Q&A) sections 100.04–.05 of Q&A section 100, *Independence*.

.13 Management participation threat. The *threat* that a *member* will take on the role of *client* management or otherwise assume management responsibilities, such may occur during an engagement to provide nonattest services.

.14 Self-interest threat. The *threat* that a *member* could benefit, financially or otherwise, from an interest in, or relationship with, a *client* or persons associated with the *client*. Examples of self-interest *threats* include the following:

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a. The *member* has a *financial interest* in a *client*, and the outcome of a *professional services* engagement may affect the fair value of that *financial interest*.

b. The *member's* spouse enters into employment negotiations with the *client*.

c. A *firm* enters into a contingent fee arrangement for a tax refund claim that is not a predetermined fee.

d. Excessive reliance exists on revenue from a single *client*.

.15 Self-review threat. The *threat* that a *member* will not appropriately evaluate the results of a previous judgment made or service performed or supervised by the *member* or an individual in the *member's firm* and that the *member* will rely on that service in forming a judgment as part of another service. Examples of self-review *threats* include the following:

a. The *member* relies on the work product of the *member's firm*.

b. The *member* performs bookkeeping services for a *client*.

c. A *partner* in the *member's office* was associated with the *client* as an employee, an officer, a director, or a contractor.

.16 Undue influence threat. The *threat* that a *member* will subordinate his or her judgment to an individual associated with a *client* or any relevant third party due to that individual's reputation or expertise, aggressive or dominant personality, or attempts to coerce or exercise excessive influence over the *member*. Examples of undue influence *threats* include the following:

a. The *firm* is threatened with dismissal from a *client* engagement.

b. The *client* indicates that it will not award additional engagements to the *firm* if the *firm* continues to disagree with the *client* on an accounting or tax matter.

c. An individual associated with a *client* or any relevant third party threatens to withdraw or terminate a *professional service* unless the *member* reaches certain judgments or conclusions.

Safeguards

.17 *Safeguards* may partially or completely eliminate a *threat* or diminish the potential influence of a *threat*. The nature and extent of the *safeguards* applied will depend on many factors. To be effective, *safeguards* should eliminate the *threat* or reduce it to an *acceptable level*.

.18 *Safeguards* that may eliminate a *threat* or reduce it to an *acceptable level* fall into three broad categories:

a. *Safeguards* created by the profession, legislation, or regulation.

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b. *Safeguards* implemented by the *client*. It is not possible to rely solely on *safeguards* implemented by the *client* to eliminate or reduce significant *threats* to an *acceptable level*.

c. *Safeguards* implemented by the *firm*, including policies and procedures to implement professional and regulatory requirements.

.19 The effectiveness of a *safeguard* depends on many factors, including those listed here:

a. The facts and circumstances specific to a particular situation

b. The proper identification of *threats*

c. Whether the *safeguard* is suitably designed to meet its objectives

d. The party(ies) who will be subject to the *safeguard*

e. How the *safeguard* is applied

f. The consistency with which the *safeguard* is applied

g. Who applies the *safeguard*

h. How the *safeguard* interacts with a *safeguard* from another category

i. Whether the *client* is a *public interest entity*

.20 Examples of *safeguards* within each category are presented in the following paragraphs. Because these are only examples and are not intended to be all inclusive, it is possible that *threats* may be sufficiently mitigated through the application of other *safeguards* not specifically identified herein.

.21 The following are examples of *safeguards* created by the profession, legislation, or regulation:

a. Education and training requirements on *independence* and ethics rules

b. Continuing education requirements on *independence* and ethics

c. Professional standards and the threat of discipline

d. External review of a *firm's* system of quality management

e. Legislation establishing prohibitions and requirements for a *firm* or a *firm's* professional employees

f. Competency and experience requirements for professional licensure

g. Professional resources, such as hotlines, for consultation on ethical issues

.22 Examples of *safeguards* implemented by the *client* that would operate in combination with other *safeguards* are as follows:

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a. The *client* has personnel with suitable skill, knowledge, or experience who make managerial decisions about the delivery of *professional services* and makes use of third-party resources for consultation as needed.

b. The tone at the top emphasizes the *client's* commitment to fair financial reporting and compliance with the applicable laws, rules, regulations, and corporate governance policies.

c. Policies and procedures are in place to achieve fair financial reporting and compliance with the applicable laws, rules, regulations, and corporate governance policies.

d. Policies and procedures are in place to address ethical conduct.

e. A governance structure, such as an active audit committee, is in place to ensure appropriate decision making, oversight, and communications regarding a *firm's* services.

f. Policies are in place that bar the entity from hiring a *firm* to provide services that do not serve the public interest or that would cause the *firm's independence* or objectivity to be considered *impaired*.

.23 The following are examples of *safeguards* implemented by the *firm*:

a. *Firm* leadership that stresses the importance of complying with the rules and the expectation that engagement teams will act in the public interest.

b. Design, implementation, and operation of a system of quality management to provide reasonable assurance of compliance with applicable standards.

c. Documented policies regarding the identification of *threats* to compliance with the rules, the evaluation of the significance of those *threats*, and the identification and application of *safeguards* that can eliminate identified *threats* or reduce them to an *acceptable level*.

d. Internal policies and procedures that are designed to monitor compliance with the *firm's* policies and procedures.

e. Policies and procedures that are designed to identify interests or relationships between the *firm* or its *partners* and professional staff and the *firm's clients*.

f. The use of different *partners*, *partner equivalents*, and engagement teams from different offices or that report to different supervisors.

g. Training on, and timely communication of, a *firm's* policies and procedures and any changes to them for all *partners* and professional staff.

h. Policies and procedures that are designed to monitor the *firm's*, *partner's*, or *partner equivalent's* reliance on revenue from a single *client* and that, if necessary, trigger action to address excessive reliance.

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i. Designation of an appropriate member of senior management as the person responsible for overseeing the adequate functioning of the *firm's* system of quality management.

j. A means for informing *partners* and professional staff of *attest clients* and related entities from which they must be independent.

k. A disciplinary mechanism that is designed to promote compliance with policies and procedures.

l. Policies and procedures that are designed to empower staff to communicate to senior members of the *firm* any engagement issues that concern them without fear of retribution.

m. Policies and procedures relating to *independence* and ethics communications with audit committees or others charged with *client* governance.

n. Discussion of *independence* and ethics issues with the audit committee or others responsible for the *client's* governance.

o. Disclosures to the audit committee or others responsible for the *client's* governance regarding the nature of the services that are or will be provided and the extent of the fees charged or to be charged.

p. The involvement of another professional accountant who (*a*) reviews the work that is done for a *client* or (*b*) otherwise advises the engagement team. This individual could be someone from outside the *firm* or someone from within the *firm* who is not otherwise associated with the engagement.

q. Consultation on engagement issues with an interested third party, such as a committee of independent directors, a professional regulatory body, or another professional accountant.

r. Rotation of senior personnel who are part of the engagement team.

s. Policies and procedures that are designed to ensure that members of the engagement team do not make or assume responsibility for management decisions for the *client*.

t. The involvement of another *firm* to perform part of the engagement.

u. Having another *firm* to reperform a nonattest service to the extent necessary for it to take responsibility for that service.

v. The removal of an individual from an *attest engagement team* when that individual's *financial interests* or relationships pose a *threat* to *independence* or objectivity.

w. A consultation function that is staffed with experts in accounting, auditing, *independence*, ethics, and reporting matters who can help engagement teams

    i. assess issues when guidance is unclear or when the issues are highly technical or require a great deal of judgment; and

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ii. resist undue pressure from a *client* when the engagement team disagrees with the *client* about such issues.

x. *Client* acceptance and continuation policies that are designed to prevent association with *clients* that pose a *threat* that is not at an *acceptable level* to the *member's* compliance with the rules.

y. Policies that preclude audit *partners* or *partner equivalents* from being directly compensated for selling nonattest services to the *attest client*.

z. Policies and procedures addressing ethical conduct and compliance with laws and regulations. [No prior reference: new content]

Effective Date

.24 Effective December 15, 2015. Early implementation is allowed provided the *member* has implemented the revised code.

[See Revision History Table.]

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.000.020 Ethical Conflicts

.01 An ethical conflict arises when a *member* encounters one or both of the following:

a. Obstacles to following an appropriate course of action due to internal or external pressures

b. Conflicts in applying relevant professional standards or legal standards

.02 Once an ethical conflict is encountered, a *member* may be required to take steps to best achieve compliance with the rules and law. In weighing alternative courses of action, the *member* should consider factors such as the following:

a. Relevant facts and circumstances, including applicable rules, laws, or regulations

b. Ethical issues involved

c. Established internal procedures

.03 The *member* should also be prepared to justify any departures that the *member* believes were appropriate in applying the relevant rules and law. If the *member* was unable to

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resolve the conflict in a way that permitted compliance with the applicable rules and law, the *member* may have to address the consequences of any violations.

.04 Before pursuing a course of action, the *member* should consider consulting with appropriate persons within the *firm* or the organization that employs the *member*.

.05 If a *member* decides not to consult with appropriate persons within the *firm* or the organization that employs the *member* and the conflict remains unresolved after pursuing the selected course of action, the *member* should consider either consulting with other individuals for help in reaching a resolution or obtaining advice from an appropriate professional body or legal counsel. The *member* also should consider documenting the substance of the issue, the parties with whom the issue was discussed, details of any discussions held, and any decisions made concerning the issue.

.06 If the ethical conflict remains unresolved, the *member* will in all likelihood be in violation of one or more rules if he or she remains associated with the matter creating the conflict. Accordingly, the *member* should consider his or her continuing relationship with the engagement team, specific assignment, *client*, *firm*, or employer. [No prior reference: new content.]

.07 Refer to the "Responding to Noncompliance With Laws and Regulations" interpretation [1.180.010] of the "Integrity and Objectivity Rule" [1.100.001] for additional guidance.

Effective Date

.08 Effective December 15, 2014.

[See Revision History Table.]

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1.100 Integrity and Objectivity

1.100.001 Integrity and Objectivity Rule

.01 In the performance of any *professional service*, a *member* shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others. [Prior reference: paragraph .01 of ET section 102]

Interpretations Under the Integrity and Objectivity Rule

1.100.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Integrity and Objectivity Rule" [1.100.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

Nonauthoritative questions and answers related to the objectivity of an engagement quality reviewer are available. See Ethics Questions & Answers section 50Ethics Questions & Answers section 50, *Objectivity*.

.02 A *member* would be considered in violation of the "Integrity and Objectivity Rule" [1.100.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015 and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

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1.110 Conflicts of Interest

1.110.010 Conflicts of Interest for Members in Public Practice

.01 A *member* or his or her *firm* may be faced with a conflict of interest when performing a *professional service*. In determining whether a *professional service*, relationship or matter would result in a conflict of interest, a *member* should use professional judgment, taking into account whether a reasonable and informed third party who is aware of the relevant information would conclude that a conflict of interest exists.

.02 A conflict of interest creates adverse interest and self-interest *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001]. For example, *threats* may be created when

a. the *member* or the *member's firm* provides a *professional service* related to a particular matter involving two or more *clients* whose interests with respect to that matter are in conflict, or

b. the interests of the *member* or the *member's firm* with respect to a particular matter and the interests of the *client* for whom the *member* or the *member's firm* provides a *professional service* related to that matter are in conflict.

.03 Certain professional engagements, such as audits, reviews and other attest services require *independence*. *Independence* impairments under the "Independence Rule" [1.200.001], its *interpretations*, and rulings cannot be eliminated by the *safeguards* provided in this interpretation or by disclosure and consent.

.04 The following are examples of situations in which conflicts of interest may arise:

a. Providing corporate finance services to a *client* seeking to acquire an audit *client* of the *firm*, when the *firm* has obtained confidential information during the course of the audit that may be relevant to the transaction

b. Advising two *clients* at the same time who are competing to acquire the same company when the advice might be relevant to the parties' competitive positions

c. Providing services to both a vendor and a purchaser who are *clients* of the *firm* in relation to the same transaction

d. Preparing valuations of assets for two *clients* who are in an adversarial position with respect to the same assets

e. Representing two *clients* at the same time regarding the same matter who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership

f. Providing a report for a licensor on royalties due under a license agreement while at the same time advising the licensee of the correctness of the amounts payable under the same license agreement

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g. Advising a *client* to invest in a business in which, for example, the *immediate family* member of the *member* has a *financial interest* in the business

h. Providing strategic advice to a *client* on its competitive position while having a joint venture or similar interest with a competitor of the *client*

i. Advising a *client* on the acquisition of a business which the *firm* is also interested in acquiring

j. Advising a *client* on the purchase of a product or service while having a royalty or commission agreement with one of the potential vendors of that product or service

k. Providing forensic investigation services to a *client* for the purpose of evaluating or supporting contemplated litigation against another *client* of the *firm*

l. Providing tax or personal financial planning services for several members of a family whom the *member* knows to have opposing interests

m. Referring a personal financial planning or tax *client* to an insurance broker or other service provider, which refers *clients* to the *member* under an exclusive arrangement

n. A *client* asks the *member* to provide tax or personal financial planning services to its executives, and the services could result in the *member* recommending to the executives actions that may be adverse to the company. [Prior reference: paragraphs .198–.199 of ET section 191]

o. A *member* serves as a director or an officer of a local United Way or similar organization that operates as a federated fund-raising organization from which local charities receive funds. Some of those charities are *clients* of the *member's firm*. [Prior reference: paragraphs .186–.187 of ET section 191]

p. A *member* who is an officer, a director, or a shareholder of an entity has *significant influence* over the entity, and that entity has a loan to or from a *client* of the *firm*. [Prior reference: paragraphs .220–.221 of ET section 191]

Identification of a Conflict of Interest

.05 Before accepting a new *client* relationship, engagement, or business relationship, a *member* should take reasonable steps to identify circumstances that might create a conflict of interest including identification of

a. the nature of the relevant interests and relationships between the parties involved and

b. the nature of the service and its implication for relevant parties.

.06 The nature of the relevant interests and relationships and the services may change during the course of the engagement. This is particularly true when a *member* is asked to conduct an engagement for a *client* in a situation that may become adversarial with respect to another *client* or the *member* or *member's firm*, even though the parties who engage the

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member may not initially be involved in a dispute. A *member* should remain alert to such changes for the purpose of identifying circumstances that might create a conflict of interest.

.07 For the purpose of identifying interests and relationships that might create a conflict of interest, having an effective conflict identification process assists a *member* in identifying actual or potential conflicts of interest that may create significant *threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] prior to determining whether to accept an engagement and throughout an engagement. This includes matters identified by external parties, for example *clients* or potential *clients*. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of a *member* being able to apply *safeguards* to eliminate or reduce significant *threats* to an *acceptable level*. The process to identify actual or potential conflicts of interest will depend on such factors as

a. the nature of the *professional services* provided,

b. the size of the *firm*,

c. the size and nature of the *client* base, and

d. the structure of the *firm*, for example the number and geographic location of offices.

.08 If the *firm* is a member of a *network*, the *member* is not required to take specific steps to identify conflicts of interest of other *network firms*; however, if the *member* knows or has reason to believe that such conflicts of interest may exist or might arise due to interests and relationships of a *network firm*, the *member* should evaluate the significance of the *threat* created by such conflicts of interest as described below.

Evaluation of a Conflict of Interest

.09 When an actual conflict of interest has been identified, the *member* should evaluate the significance of the *threat* created by the conflict of interest to determine if the *threat* is at an *acceptable level*. Members should consider both qualitative and quantitative factors when evaluating the significance of the *threat*, including the extent to which existing *safeguards* already reduce the *threat* to an *acceptable level*. In evaluating the significance of an identified *threat*, *members* should consider both of the following:

a. The significance of relevant interests or relationships.

b. The significance of the *threats* created by performing the *professional service* or services. In general, the more direct the connection between the *professional service* and the matter on which the parties' interests are in conflict, the more significant the *threat* to compliance with the rule will be.

.10 If the *member* concludes that the *threat* is not at an *acceptable level*, the *member* should apply *safeguards* to eliminate the *threat* or reduce it to an *acceptable level*. Examples of *safeguards* include the following:

a. Implementing mechanisms to prevent unauthorized disclosure of confidential information when performing *professional services* related to a particular matter for

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two or more *clients* whose interests with respect to that matter are in conflict. This could include

i. using separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality;

ii. creating separate areas of practice for specialty functions within the *firm*, which may act as a barrier to the passing of *confidential client information* from one practice area to another within a *firm*;

iii. establishing policies and procedures to limit access to *client* files, the use of confidentiality agreements signed by employees and *partners* of the *firm* and the physical and electronic separation of confidential information.

b. Regularly reviewing the application of *safeguards* by a senior individual not involved with the *client* engagement or engagements.

c. Having a member of the *firm* who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgments and conclusions are appropriate.

d. Consulting with third parties, such as a professional body, legal counsel, or another professional accountant.

.11 In cases where an identified *threat* may be so significant that no *safeguards* will eliminate the *threat* or reduce it to an *acceptable level*, or the *member* is unable to implement effective *safeguards*, the *member* should (*a*) decline to perform or discontinue the *professional services* that would result in the conflict of interest; or (*b*) terminate the relevant relationships or dispose of the relevant interests to eliminate the *threat* or reduce it to an *acceptable level*.

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

Disclosure of a Conflict of Interest and Consent

.12 When a conflict of interest exists, the *member* should disclose the nature of the conflict of interest to *clients* and other appropriate parties affected by the conflict and obtain their consent to perform the *professional services*. The *member* should disclose the conflict of interest and obtain consent even if the *member* concludes that *threats* are at an *acceptable level*.

.13 Disclosure and consent may take different forms. The following are examples:

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a. General disclosure to *clients* of circumstances in which the *member*, in keeping with common commercial practice, does not provide services exclusively for any one *client* (for example, in a particular service in a particular market sector) in order for the *client* to provide general consent accordingly. Such disclosure might be made in a *member's* standard terms and conditions for the engagement.

b. Specific disclosure to affected *clients* of the circumstances of the particular conflict including an explanation of the situation and any planned *safeguards*, sufficient to enable the *client* to make an informed decision with respect to the matter and to provide specific consent.

.14 The *member* should determine whether the nature and significance of the conflict of interest is such that specific disclosure and specific consent are necessary, as opposed to general disclosure and general consent. For this purpose, the *member* should exercise professional judgment in evaluating the circumstances that create a conflict of interest, including the parties that might be affected, the nature of the issues that might arise and the potential for the particular matter to develop in an unexpected manner.

.15 When a *member* has requested specific consent from a *client* and that consent has been refused by the *client*, the *member* should (*a*) decline to perform or discontinue *professional services* that would result in the conflict of interest; or (*b*) terminate the relevant relationships or dispose of the relevant interests to eliminate the *threat* or reduce it to an *acceptable level*, such that consent can be obtained, after applying any additional *safeguards*, if necessary.

.16 The *member* is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the *safeguards* applied to eliminate or reduce the *threats* to an *acceptable level*, and the consent obtained.

.17 When addressing conflicts of interest, including making disclosures and seeking guidance of third parties, a *member* should remain alert to the requirements of the "Confidential Client Information Rule" [1.700.001] and the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [1.400.070] of the "Acts Discreditable Rule" [1.400.001]. In addition, federal, state, or local statutes, or regulations concerning confidentiality of *client* information may be more restrictive than the requirements contained in the Code of Professional Conduct.

.18 When practicing before the IRS or other taxing authorities, *members* should ensure compliance with any requirements that are more restrictive. For example, Treasury Department Circular No. 230, *Regulations Governing Practice before the Internal Revenue Service*, provides more restrictive requirements concerning written consent by the *client* when a conflict of interest exists.

[See Revision History Table.]

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A nonauthoritative question and answer regarding independent contractors retained by the firm who are simultaneously employed or associated with an attest client is available. See Ethics Questions & Answers section 100.02Ethics Questions & Answers section 100.02, "Independent Contractors."

1.110.020 Director Positions

.01 When a *member* serves as a director of an entity, such as a bank, the *member's* fiduciary responsibilities to the entity may create *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] and the "Confidential Client Information Rule" [1.700.001]. For example, an adverse interest *threat* to the *member's* objectivity may exist if the *member's clients* are customers of the entity or likely to engage in significant transactions with the entity. A *member's* general knowledge and experience may be very helpful to an entity in formulating policies and making business decisions. Nevertheless, if the *member's clients* are likely to engage in significant transactions with the entity, it would be more appropriate for the *member* to serve as a consultant to the board. Under such an arrangement, the *member* could limit activities to those that do not *threaten* the *member's* compliance with these rules. If, however, the *member* serves as a board member, the *member* should evaluate the significance of any *threats* and apply *safeguards*, when necessary, to eliminate or reduce the *threats* to an *acceptable level*.

.02 Refer to the "Disclosing Client Information in Director Positions" interpretation [1.700.080] of the "Confidential Client Information Rule" [1.700.001] for additional guidance. [Prior reference: paragraphs .170–.171 of ET section 191]

Effective Date

.03 This revised interpretation is effective December 15, 2014.

1.120 Gifts and Entertainment

1.120.010 Offering or Accepting Gifts or Entertainment

.01 For purposes of this interpretation, a client includes the *client*, an individual in a *key position* with the *client*, or an individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *client*.

.02 When a *member* offers to a client or accepts gifts or entertainment from a client, self-interest, familiarity, or undue influence *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] may exist.

.03 *Threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* and the *member* would be presumed to lack integrity in violation of the "Integrity and Objectivity Rule" in the following circumstances:

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a. The *member* offers to a client or accepts gifts or entertainment from a client that violate the *member's* or client's policies or applicable laws, rules, and regulations; and

b. The *member* knows of the violation or demonstrates recklessness in not knowing.

.04 A *member* should evaluate the significance of any *threats* to determine if they are at an *acceptable level*. *Threats* are at an *acceptable level* when gifts or entertainment are reasonable in the circumstances. The *member* should exercise judgment in determining whether gifts or entertainment would be considered reasonable in the circumstances. The following are examples of relevant facts and circumstances:

a. The nature of the gift or entertainment

b. The occasion giving rise to the gift or entertainment

c. The cost or value of the gift or entertainment

d. The nature, frequency, and value of other gifts and entertainment offered or accepted

e. Whether the entertainment was associated with the active conduct of business directly before, during, or after the entertainment

f. Whether other clients also participated in the entertainment

g. The individuals from the client and *member's firm* who participated in the entertainment

.05 *Threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards* if a *member* offers to a client or accepts gifts or entertainment from a client that is not reasonable in the circumstances. The *member* would be presumed to lack objectivity in violation of the "Integrity and Objectivity Rule" under these circumstances.

.06 Refer to the "Offering or Accepting Gifts or Entertainment" interpretation [1.285.010] of the "Independence Rule" [1.200.001] for additional guidance. [Prior reference: paragraphs .226–.227 of ET section 191]

[See Revision History Table.]

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A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: New Ethics Rulings Under Rule 102 — Integrity and Objectivity and Rule 101 — IndependenceBackground and Basis for Conclusions: New Ethics Rulings Under Rule 102 — Integrity and Objectivity and Rule 101 — Independence" in *Basis for Conclusion Documents*.

A nonauthoritative question and answer regarding member contributions made to the campaign of an individual who holds a key position with or has a financial interest in an attest client is available. See Ethics Questions & Answers section 100.01Ethics Questions & Answers section 100.01, "Campaign Contributions."

A nonauthoritative practice aid is available at www.aicpa-cima.com/resources/download/practice-aid-understanding-circumstances-that-may-compromise-your-integrity-and-objectivity.

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.130 Preparing and Reporting Information

1.130.010 Knowing Misrepresentations in the Preparation of Financial Statements or Records

.01 *Threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* and the *member* would be considered to have knowingly misrepresented facts in violation of the "Integrity and Objectivity Rule," if the *member*

a. makes, or permits or directs another to make, materially false and misleading entries in an entity's *financial statements* or records;

b. fails to correct an entity's *financial statements* or records that are materially false and misleading when the *member* has the authority to record the entries; or

c. signs, or permits or directs another to sign, a document containing materially false and misleading information. [Prior reference: paragraph .02 of ET section 102]

1.130.020 Subordination of Judgment

.01 The "Integrity and Objectivity Rule" [1.100.001] prohibits a *member* from knowingly misrepresenting facts or subordinating his or her judgment when performing *professional services* for a *client* , for an employer, or on a volunteer basis. This interpretation addresses

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differences of opinion between a *member* and his or her supervisor or any other person within the *member's* organization.

.02 Self-interest, familiarity, and undue influence *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] may exist when a *member* and his or her supervisor or any other person within the *member's* organization have a difference of opinion relating to the application of accounting principles; auditing standards; or other relevant professional standards, including standards applicable to tax and consulting services or applicable laws or regulations.

.03 A *member* should evaluate the significance of any *threats* to determine if they are at an *acceptable level*. *Threats* are at an *acceptable level* if the *member* concludes that the position taken does not result in a material misrepresentation of fact or a violation of applicable laws or regulations. If *threats* are not at an *acceptable level*, the *member* should apply the *safeguards* in paragraphs .06–.08 to eliminate or reduce the *threat(s)* to an *acceptable level* so that the *member* does not subordinate his or her judgment.

.04 In evaluating the significance of any identified *threats* , the *member* should determine, after appropriate research or consultation, whether the result of the position taken by the supervisor or other person

a. fails to comply with professional standards, when applicable;

b. creates a material misrepresentation of fact; or

c. may violate applicable laws or regulations.

.05 If the *member* concludes that *threats* are at an *acceptable level* the *member* should discuss his or her conclusions with the person taking the position. No further action would be needed under this interpretation.

.06 If the *member* concludes that the position results in a material misrepresentation of fact or a violation of applicable laws or regulations, then *threats* would not be at an *acceptable level*. In such circumstances, the *member* should discuss his or her concerns with the supervisor.

.07 If the difference of opinion is not resolved after discussing the concerns with the supervisor, the *member* should discuss his or her concerns with the appropriate higher level(s) of management within the *member's* organization (for example, the supervisor's immediate superior, senior management, and *those charged with governance*).

.08 If after discussing the concerns with the supervisor and appropriate higher level(s) of management within the *member's* organization, the *member* concludes that appropriate action was not taken, then the *member* should consider, in no specific order, the following *safeguards* to ensure that *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] are eliminated or reduced to an *acceptable level*:

a. Determine whether the organization's internal policies and procedures have any additional requirements for reporting differences of opinion.

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b. Determine whether he or she is responsible for communicating to third parties, such as regulatory authorities or the organization's (former organization's) external accountant. In considering such communications, the *member* should be cognizant of his or her obligations under the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [1.400.070] of the "Acts Discreditable Rule" [1.400.001].

c. Consult with his or her legal counsel regarding his or her responsibilities.

d. Document his or her understanding of the facts, the accounting principles, auditing standards, or other relevant professional standards involved or applicable laws or regulations and the conversations and parties with whom these matters were discussed.

.09 If the *member* concludes that no *safeguards* can eliminate or reduce the *threats* to an *acceptable level* or if the *member* concludes that appropriate action was not taken, then he or she should consider the continuing relationship with the *member's* organization and take appropriate steps to eliminate his or her exposure to subordination of judgment.

.10 Nothing in this interpretation precludes a *member* from resigning from the organization at any time. However, resignation may not relieve the *member* of responsibilities in the situation, including any responsibility to disclose concerns to third parties, such as regulatory authorities or the employer's (former employer's) external accountant.

.11 A *member* should use professional judgment and apply similar *safeguards*, as appropriate, to other situations involving a difference of opinion as described in this interpretation so that the *member* does not subordinate his or her judgment. [Prior reference: paragraph .05 of ET section 102]

1.140 Client Advocacy

1.140.010 Client Advocacy

.01 An advocacy *threat* to compliance with the "Integrity and Objectivity Rule" [1.100.001] may exist when a *member* or the *member's firm* is engaged to perform nonattest services, such as tax and consulting services, that involve acting as an advocate for the *client* or to support a *client's* position on accounting or financial reporting issues either within the *firm* or outside the *firm* with standard setters, regulators, or others.

.02 The code governs these types of *professional services*, and the *member* shall perform such services in compliance with the "General Standards Rule" [1.300.001], the "Compliance With Standards Rule" [1.310.001], the "Accounting Principles Rule" [1.320.001], and any *interpretations* thereof. The *member* shall also comply with the "Integrity and Objectivity Rule" [1.100.001] that requires maintaining objectivity and integrity and prohibits subordinating one's judgment to others.

.03 Some *professional services* involving *client* advocacy may stretch the bounds of performance standards, go beyond sound and reasonable professional practice, or compromise credibility, thereby creating *threats* to the *member's* compliance with the rules

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and damaging the reputation of the *member* and the *member's firm*. If such circumstances exist, the *member* and *member's firm* should determine whether it is appropriate to perform the *professional services*.

.04 When performing *professional services* requiring *independence*, a *member* shall also comply with the "Independence Rule" [1.200.001]. [Prior reference: paragraph .07 of ET section 102]

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.150 Use of a Third-Party Service Provider

1.150.040 Use of a Third-Party Service Provider

.01 When a *member* uses a *third-party service provider* to assist the *member* in providing *professional services*, *threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] may exist.

.02 *Clients* might not have an expectation that a *member* would use a *third-party service provider* to assist the *member* in providing the *professional services*. Therefore, before disclosing *confidential client information* to a *third-party service provider*, the *member* should inform the *client*, preferably in writing, that the *member* may use a *third-party service provider*. If the *client* objects to the *member's* use of a *third-party service provider*, the *member* either should not use the *third-party service provider* to perform the *professional services* or should decline to perform the engagement.

.03 A *member* is not required to inform the *client* when he or she uses a *third-party service provider* to provide administrative support services to the *member* (for example, record storage, software application hosting, or authorized e-file tax transmittal services).

.04 Refer to the "Use of a Third-Party Service Provider" interpretation [1.300.040] of the "General Standards Rule" [1.300.001] and the "Disclosing Information to a Third-Party Service Provider" interpretation [1.700.040] of the "Confidential Client Information Rule" [1.700.001] for additional guidance. [Prior reference: paragraphs .224–.225 of ET section 191]

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A nonauthoritative basis-for-conclusions document that summarizes considerations that were deemed significant in the development of this interpretation is available. See “Background and Basis for Conclusions: Outsourcing — New and Revised Ethics Rulings Under Rule 102 — Integrity and Objectivity, Rule 201 — General Standards, Rule 202 — Compliance With Standards, and Rule 301 — Confidential Client InformationBackground and Basis for Conclusions: Outsourcing — New and Revised Ethics Rulings Under Rule 102 — Integrity and Objectivity, Rule 201 — General Standards, Rule 202 — Compliance With Standards, and Rule 301 — Confidential Client Information” in *Basis for Conclusion Documents*.

In addition, nonauthoritative sample client disclosure language a member could use to fulfill the requirement discussed in this interpretation is also available at www.aicpa-cima.com/resources/download/sample-client-disclosure-language-for-outsourcing-rules.

1.180 Responding to Noncompliance With Laws and Regulations

1.180.010 Responding to Noncompliance With Laws and Regulations

Introduction

.01 When a *member* encounters or is made aware of noncompliance or suspected noncompliance with laws and regulations in the course of providing a *professional service* to a *client*, *threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] may exist. The purpose of this interpretation is to set out the *member's* responsibilities when encountering such noncompliance or suspected noncompliance and guide the *member* in evaluating the implications of the matter and the possible courses of action when responding to it. The *member's* responsibilities in this interpretation are owed to a person or entity that engages the *member* or *member's firm* to perform professional services (engaging entity). Therefore, when the engaging entity and subject entity are different, the term *client* refers to the engaging entity.

.02 Noncompliance with laws and regulations (noncompliance) comprises acts of omission or commission, intentional or unintentional, that are contrary to the prevailing laws or regulations and are committed by a *client* or by *those charged with governance*, by management, or by other individuals working for or under the direction of a *client*.

.03 When responding to noncompliance or suspected noncompliance in the course of providing a *professional service* to a *client*, the *member* should consider the *member's* obligations under the "Confidential Client Information Rule" [1.700.001]. For example, a *member* should not disclose the noncompliance or suspected noncompliance to a third party without the *client's* consent unless expressly permitted under the "Confidential Client Information Rule," such as when reporting the noncompliance or suspected noncompliance

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to a regulatory authority in order to comply with applicable laws and regulations or the "Compliance With Standards Rule" [1.310.001], as discussed in paragraphs .04 and .05*d*, respectively.

.04 Some regulators, such as the SEC or state boards of accountancy, may have regulatory provisions governing how a *member* should address noncompliance or suspected noncompliance which may differ from or go beyond this interpretation. In some circumstances, state and federal civil and criminal laws may also impose additional requirements. When encountering noncompliance or suspected noncompliance, a *member* has a responsibility to obtain an understanding of those legal or regulatory provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the *client* prior to making any disclosure.

.05 A distinguishing mark of the accounting profession is its acceptance of the responsibility to act in the public interest. When responding to noncompliance or suspected noncompliance, the objectives of a *member* are as follows:

a. To comply with the "Integrity and Objectivity Rule" [1.100.001]

b. To alert management or, when appropriate, *those charged with governance* of the *client*, to enable them to

    i. rectify, remediate, or mitigate the consequences of the identified or suspected noncompliance or

    ii. deter the commission of the noncompliance when it has not yet occurred

c. To determine whether withdrawal from the engagement and the professional relationship is necessary, when permitted by law and regulation

d. To take such further action as appropriate in the public interest

e. To comply with applicable laws, regulations, and the "Compliance With Standards Rule" [1.310.001]

Applicability

.06 This interpretation does not apply to the following:

a. Personal misconduct unrelated to the business activities of the *client*

b. Noncompliance by parties other than

    i. the *client*,

    ii. *those charged with governance*,

    iii. management, or

    iv. other individuals working for or under the direction of the *client*.

    This includes, for example, circumstances in which a *member* has been engaged by a *client* to perform a due diligence assignment on a third-party

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entity (that is, subject entity) and the identified or suspected noncompliance has been committed by that third party.

c. A litigation or investigation engagement as defined in AICPA Statement on Standards for Forensic Services No. 1

d. An engagement where the primary purpose is to identify, reach a conclusion regarding, or otherwise respond to a known or potential noncompliance with laws and regulations (NOCLAR)

e. An engagement pursuant to which the protections set forth in IRC Section 7525 or any comparable state or local statutes apply

f. An engagement where compliance with this interpretation would cause a violation of law or regulation

A *member* may nevertheless find the guidance in this interpretation helpful in considering how to respond in these situations.

Scope

.07 This interpretation sets out the approach to be taken by a *member* who encounters or is made aware of noncompliance or suspected noncompliance with the following:

a. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the *client's financial statements*

b. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the *client's financial statements*, but compliance with which may be fundamental to the operating aspects of the *client's* business, to its ability to continue its business, or to avoid material penalties

.08 Examples of laws and regulations which this interpretation addresses may include those that deal with the following:

a. Fraud, corruption, and bribery

b. Money laundering

c. Securities markets and trading

d. Banking and other financial products and services

e. Data protection

f. Tax and pension liabilities and payments

g. Environmental protection

h. Public health and safety

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.09 Noncompliance may result in fines, litigation, or other consequences for the *client* that may have a material effect on its *financial statements*. Importantly, such noncompliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees, or the general public. For the purposes of this interpretation, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or nonfinancial terms.

.10 A *member* who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this interpretation with respect to such matters.

Responsibilities of the Client's Management and Those Charged With Governance

.11 The *client's* management is responsible, with the oversight of *those charged with governance*, to ensure that the *client's* business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and *those charged with governance* to identify and address any noncompliance by the *client*, by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the *client*.

Responsibilities of Members in Public Practice

.12 When a *member* becomes aware of a matter to which this interpretation applies, the *member* should take timely steps to comply with this interpretation, taking into account the *member's* understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees, or the general public.

Members Providing Financial Statement Audit or Review Services

Obtaining an Understanding of the Matter

.13 If a *member* engaged to perform financial statement audit or review services becomes aware of credible information concerning an instance of noncompliance or suspected noncompliance, whether in the course of performing the engagement or through information provided by other parties, the *member* should obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or is likely to occur.

.14 A *member* is expected to apply knowledge, professional judgment, and expertise but is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement. Whether an act constitutes noncompliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

.15 If the *member* identifies or suspects that noncompliance has occurred or is likely to occur, the *member* should discuss the matter with the appropriate level of management and, when appropriate, *those charged with governance*.

.16 Such discussion may serve to clarify the *member's* understanding of the facts and circumstances relevant to the matter and its potential consequences.

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.17 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider may include these:

a. The nature and circumstances of the matter

b. The individuals actually or potentially involved

c. The likelihood of collusion

d. The potential consequences of the matter

e. Whether that level of management is able to investigate the matter and take appropriate action

.18 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If a *member* believes that management is involved in the noncompliance or suspected noncompliance, the *member* should discuss the matter with *those charged with governance*. The *member* may also consider discussing the matter with internal auditors, when applicable. In the context of a group audit engagement, the appropriate level may be management at an entity that controls the *client*.

Addressing the Matter

.19 In discussing the noncompliance or suspected noncompliance with management and, when appropriate, *those charged with governance*, the *member* should advise them to take appropriate and timely actions, if they have not already done so, which may include the following:

a. Rectifying, remediating, or mitigating the consequences of the noncompliance

b. Deterring the commission of the noncompliance if it has not yet occurred

c. Disclosing the matter to an appropriate authority where required by law or regulation or when otherwise considered necessary

.20 The *member* should consider whether the *client's* management and, if applicable, *those charged with governance* understand their legal or regulatory responsibilities with respect to the noncompliance or suspected noncompliance. If not, the *member* may want to suggest appropriate sources of information or recommend that they obtain legal advice.

.21 The *member* should comply with the following:

a. Applicable laws and regulations, including legal or regulatory provisions governing the reporting of noncompliance or suspected noncompliance to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made.

b. Applicable requirements under professional standards, including those relating to

    i. identifying and responding to noncompliance, including fraud;

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ii. communicating with *those charged with governance*;

iii. considering the implications of the noncompliance or suspected noncompliance on the audit, review, or compilation report for the current or prior engagements; and

iv. communicating a former *client's* noncompliance to the successor auditor to the extent required under professional standards.

Communication With Respect to Group Audit Engagements

.22 A *member* may, for purposes of a group audit engagement, be requested by the group engagement team to perform work on financial or other information related to a component of the group.

If the *member* becomes aware of noncompliance or suspected noncompliance, the *member* should, in addition to responding to the matter in accordance with the provisions of this section, communicate the noncompliance or suspected noncompliance to the group audit engagement partner in accordance with AU-C section 600A, *Special Considerations — Audits of Group Financial Statements (Including the Work of Component Auditors*), unless prohibited from doing so by law or regulation.

.23 If the group audit engagement *partner* becomes aware of noncompliance or suspected noncompliance in the course of a group audit engagement, including as a result of being informed of such a matter in accordance with paragraph .22, the group audit engagement *partner* should, in addition to responding to the matter in the context of the group audit engagement in accordance with the provisions of this section, consider whether the matter may be relevant to one or more components whose financial or other information is subject to procedures performed for purposes of the group audit engagement.

In these circumstances, the group audit engagement *partner* should take steps to have the noncompliance or suspected noncompliance communicated to those performing work at components where the matter may be relevant, unless prohibited from doing so by law or regulation.

Determining Whether Withdrawal From the Engagement Is Necessary

.24 The *member* should evaluate the appropriateness of the response of management and, if applicable, *those charged with governance*.

.25 Relevant factors to consider when evaluating the appropriateness of the response of management and, where applicable, *those charged with governance* may include whether

a. the response is timely.

b. the noncompliance or suspected noncompliance has been adequately investigated.

c. action has been, or is being, taken to rectify, remediate, or mitigate the consequences of any noncompliance.

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d. action has been or is being taken to deter the commission of any noncompliance if it has not yet occurred.

e. appropriate steps have been, or are being, taken to reduce the risk of recurrence; for example, additional controls or training.

f. the noncompliance or suspected noncompliance has been disclosed to an appropriate authority when appropriate and, if so, whether the disclosure appears adequate.

.26 In light of the response of management and, if applicable, *those charged with governance*, the *member* should determine whether withdrawing from the engagement and the professional relationship is necessary, where permitted by law and regulation.

.27 The determination of whether withdrawing from the engagement and the professional relationship is necessary may depend on various factors, including these:

a. The legal and regulatory framework

b. The urgency of the matter

c. The pervasiveness of the matter throughout the *client*

d. Whether the *member* continues to have confidence in the integrity of management and, if applicable, *those charged with governance*

e. Whether the noncompliance or suspected noncompliance is likely to reoccur

f. Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees, or the general public

.28 Examples of circumstances that may cause a *member* no longer to have confidence in the integrity of management and, where applicable, *those charged with governance* include situations such as the following:

a. The *member* suspects or has evidence of management's involvement or intended involvement in any noncompliance.

b. The *member* is aware that management has knowledge of such noncompliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

.29 As consideration of the matter may involve complex analysis and judgments, a *member* may want to consider consulting internally or externally, including obtaining legal or other advice to understand the *member's* options and the implications of taking any particular course of action.

Documentation

.30 In relation to an identified or suspected act of noncompliance that falls within the scope of this section, the *member* should, in addition to complying with the documentation requirements under applicable professional standards, document the following:

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a. The matter

b. The results of discussion with management and, where applicable, *those charged with governance* and other parties

c. How management and, where applicable, *those charged with governance*, have responded to the matter

d. The judgments made and the courses of action the *member* took

Members Providing Services Other Than a Financial Statement Audit or Review Service

Obtaining an Understanding of the Matter and Addressing the Matter

.31 If a *member* engaged to perform *professional services* other than a financial statement audit or review service becomes aware of credible information concerning an instance of noncompliance or suspected noncompliance, whether in the course of performing the engagement or through information provided by other parties, the *member* should seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or is likely to occur.

.32 A *member* is expected to apply knowledge, professional judgment, and expertise but is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement. Whether an act constitutes noncompliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

.33 If the *member* identifies or suspects that noncompliance has occurred or is likely to occur the *member* should discuss the matter with the appropriate level of management and, if the *member* has access to them and when appropriate, *those charged with governance*.

.34 Such discussion may serve to clarify the *member's* understanding of the facts and circumstances relevant to the matter and its potential consequences.

.35 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider may include the following:

a. The nature and circumstances of the matter

b. The individuals actually or potentially involved

c. The likelihood of collusion

d. The potential consequences of the matter

e. Whether that level of management is able to investigate the matter and take appropriate action

Communicating the Matter to the Client's Financial Statement Audit or Review Services Provider

.36 *Members performing a service, other than a financial statement audit or review service, for a financial statement audit or review client.* If the *member* is performing a service other

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than a financial statement audit or review service for a financial statement audit or review *client* of the *firm* or a component of a financial statement audit or review *client* of the *firm*, the *member* should communicate the noncompliance or suspected noncompliance within the *firm*. The communication should be made in accordance with the *firm's* protocols or procedures or, in the absence of such protocols and procedures, directly to the financial statement audit or review engagement *partner*.

.37 If the *member* is performing a service for a financial statement audit or review *client* of a *network firm* or a component of a financial statement audit or review *client* of a *network firm*, the *member* should consider whether to communicate the noncompliance or suspected noncompliance to the *network firm*. If the communication is made, it should be made in accordance with the *network's* protocols or procedures or, in the absence of such protocols and procedures, directly to the financial statement audit or review engagement *partner*.

.38 In all cases, the communication is to enable the financial statement audit or review engagement *partner* to be informed about the noncompliance or suspected noncompliance and to determine whether it should be addressed in accordance with the provisions of this interpretation and, if so, how.

.39 *Members providing services to a client that is not a financial statement audit or review client.* If the *member* is performing services for a *client* that is not a financial statement audit or review *client* of the *firm*, except as required by law or regulation, the *member* is not permitted to communicate the noncompliance or suspected noncompliance to the firm that is the *client's* external auditor, if one exists. See the "Confidential Client Information Rule" [1.700.001].

Determining Whether Withdrawal From the Engagement Is Necessary

.40 The *member* should determine whether withdrawal from the engagement and the professional relationship is necessary, where permitted by law and regulation.

.41 Whether withdrawal from the engagement is necessary may depend on various factors, including the *member's* understanding of the following:

a. The legal and regulatory framework

b. The appropriateness and timeliness of the response of management and, where applicable, *those charged with governance*

c. The urgency of the matter

d. Whether the *member* continues to have confidence in the integrity of management and, if applicable, *those charged with governance*

e. The likelihood of actual or potential substantial harm to the interests of the entity, investors, creditors, employees, or the general public

f. The pervasiveness of the matter throughout the *client*

g. Whether the noncompliance or suspected noncompliance is likely to reoccur

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.42 Examples of circumstances that may cause the *member* no longer to have confidence in the integrity of management and, where applicable, *those charged with governance* include such situations as the following:

a. The *member* suspects or has evidence of management's involvement or intended involvement in any noncompliance.

b. The *member* is aware that management has knowledge of such noncompliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

.43 As consideration of the matter may involve complex analysis and judgments, a *member* may want to consider consulting internally or externally, including obtaining legal or other advice to understand the *member's* options and the implications of taking any particular course of action.

Documentation

.44 In relation to an identified or suspected act of noncompliance that falls within the scope of this section, the *member* is encouraged to document the following, in addition to complying with the documentation requirements under applicable professional standards:

a. The matter

b. The results of discussion with management and, where applicable, *those charged with governance* and other parties

c. How management and, where applicable, *those charged with governance* have responded to the matter

d. The judgments made and the courses of action the *member* took

Effective Date

.45 This interpretation is effective June 30, 2023. Early implementation is allowed.

[See Revision History Table.]

Nonauthoritative questions and answers regarding responding to noncompliance with laws and regulations are available. See Ethics Questions & Answers section 90Ethics Questions & Answers section 90, *Responding to Noncompliance With Laws and Regulations*.

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1.200 Independence

1.200.001 Independence Rule

.01 A *member* in *public practice* shall be independent in the performance of *professional services* as required by standards promulgated by bodies designated by *Council*. [Prior reference: paragraph .01 of ET section 101]

Interpretations Under the Independence Rule

1.200.005 Application of the Conceptual Framework for Independence and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Independence Rule" [1.200.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Independence" interpretation [1.210.010].

.02 A *member* would be considered in violation of the "Independence Rule" [1.200.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*. [Prior reference: "Other Considerations" section of paragraph .02 of ET section 101]

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Independence is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.210 Conceptual Framework Approach

1.210.010 Conceptual Framework for Independence

Introduction

.01 It is impossible to enumerate all relationships or circumstances in which the appearance of *independence* might be questioned. Thus, in the absence of an *independence interpretation*

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that addresses a particular relationship or circumstance, a *member* should evaluate whether that relationship or circumstance would lead a reasonable and informed third party who is aware of the relevant information to conclude that there is a *threat* to either the *member's* or *firm's independence*, or both, that is not at an *acceptable level*. When making that evaluation, a *member* should apply the conceptual framework approach as outlined in this interpretation to analyze *independence* matters. A *member* may also wish to consider the conceptual framework approach described in this interpretation to gain a better understanding of the conclusions reached in other *interpretations* in ET section 1.200, "Independence." [Prior reference: "Other Considerations" section of paragraph .02 of ET section 101]

.02 The code specifies that in some circumstances no *safeguards* can reduce an *independence threat* to an *acceptable level*. For example, the code specifies that a *covered member* may not own even an immaterial *direct financial interest* in an *attest client* because there is no *safeguard* to reduce the self-interest *threat* to an *acceptable level*. A *member* may not use the conceptual framework to overcome this prohibition or any other prohibition or requirement in an *independence interpretation*.

Definitions Used in Applying the Conceptual Framework for Independence

.03 Acceptable level. A level at which a reasonable and informed third party who is aware of the relevant information would be expected to conclude that a *member's independence* is not *impaired*.

.04 Impair(ed). In connection with *independence*, to effectively extinguish *independence*. When a *member's independence* is *impaired*, the *member* is not independent.

.05 Safeguards. Actions or other measures that may eliminate a *threat* or reduce a *threat* to an *acceptable level*.

.06 Threats. Relationships or circumstances that could *impair independence*.

Conceptual Framework Approach

.07 The conceptual framework approach entails identifying *threats* and evaluating the *threat* that the *member* would not be independent or would be perceived by a reasonable and informed third party who is aware of the relevant information as not being independent. The *member* must eliminate or reduce that *threat* to an *acceptable level* to conclude that the *member* is independent. *Threats* are at an *acceptable level* either because of the types of *threats* and their potential effect or because *safeguards* have eliminated or reduced the *threat*, so that a reasonable and informed third party who is aware of the relevant information would perceive that the *member's* professional judgment is not compromised.

.08 Refer to paragraph .07 of the "Conceptual Framework for Members in Public Practice" [1.000.010.07] for a detailed description of the conceptual framework approach. [Prior reference: ET section 100-1]

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Documentation

.09 When the *member* applies *safeguards* to eliminate or reduce significant *threats* to an *acceptable level*, as described in paragraph .07*c* of the "Conceptual Framework for Members in Public Practice" [1.000.010.07], the *member* should document the identified *threats* and *safeguards* applied. Failure to prepare the required documentation would be considered a violation of the "Compliance With Standards Rule" [1.310.001] rather than the "Independence Rule" [1.200.001] if the *member* can demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*. [Prior reference: "Other Considerations" section of paragraph .02 of ET section 101]

Threats

.10 Many different relationships or circumstances (or combinations of relationships or circumstances) can create *threats* to compliance with the "Independence Rule" [1.200.001]. It is impossible to identify every relationship or circumstance that creates a *threat*. Many *threats* fall into one or more of the following seven broad categories: adverse interest, advocacy, familiarity, management participation, self-interest, self-review, and undue influence.

.11 Examples of *threats* associated with a specific relationship or circumstance are identified in the *interpretations* of the code. Paragraphs .12–.18 in this section define and provide examples, which are not all inclusive, of each of these *threat* categories. In certain circumstances, the code specifies that because of the type of *threat* and its potential effect, either no *safeguards* can eliminate or reduce the *threat* to an *acceptable level*, or a *member* would need to apply specific *safeguards* to eliminate or reduce an *independence threat* to an *acceptable level*. When *independence interpretations* in the code address one of these examples, a specific reference to the *independence interpretation* is provided in brackets after that example. If an example does not contain a specific reference to an *independence interpretation* , a *member* should use this "Conceptual Framework for Independence" interpretation to evaluate whether a *threat* is significant.

.12 *Adverse interest threat.* The *threat* that a *member* will not act with objectivity because the *member's* interests are in opposition to the interests of an *attest client*. An example is either the *attest client* or the *member* commencing litigation against the other or expressing the intent to commence litigation. [1.290.010]

.13 *Advocacy threat.* The *threat* that a *member* will promote an *attest client's* interests or position to the point that his or her *independence* is compromised. Examples of advocacy *threats* include the following:

a. A *member* promotes the *attest client's* securities as part of an initial public offering. [1.295.130]

b. A *member* provides expert witness services to an *attest client*. [1.295.140]

c. A *member* represents an *attest client* in U.S. tax court or other public forum. [1.295.160]

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.14 *Familiarity threat.* The *threat* that, because of a long or close relationship with an *attest client*, a *member* will become too sympathetic to the *attest client's* interests or too accepting of the *attest client's* work or product. Examples of familiarity *threats* include the following:

a. A member of the *attest engagement team* has an *immediate family* member or *close relative* in a *key position* at the *attest client*, such as the *attest client's* CEO. [1.270.020 and 1.270.100]

b. A *partner* or *partner equivalent* of the *firm* has been a member of the *attest engagement team* for a prolonged period.

c. A member of the *firm* has recently been a director or an officer of the *attest client*. [1.277.010]

d. A member of the *attest engagement team* has a close friend who is in a *key position* at the *attest client*.

September 2025

Conforming changes to the following paragraph, shown in grey-shaded text, are effective September 15, 2026.

.15 *Management participation threat.* The *threat* that a *member* will take on the role of *attest client* management or otherwise assume management responsibilities for an *attest client*. Examples of management participation *threats* include the following:

a. A *member* serves as an officer or a director of the *attest client*. [1.275.005]

A *member* serves as in a *key position* at the *attest client*. [1.275.005]

b. A *member* accepts responsibility for designing, implementing, or maintaining internal controls for the *attest client*. [1.295.030]

c. A *member* hires, supervises, or terminates the *attest client's* employees. [1.295.135]

[See Revision History Table.]

.16 *Self-interest threat.* The *threat* that a *member* could benefit, financially or otherwise, from an interest in, or relationship with, an *attest client* or persons associated with the *attest client*. Examples of self-interest *threats* include the following:

a. A *member* has a *direct financial interest* or material *indirect financial interest* in the *attest client*. [1.240.010]

b. A *member* has a *loan* from the *attest client*, an officer or a director of the *attest client* with the ability to affect decision-making, or any individual with a *beneficial*

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ownership interest (known through reasonable inquiry) that gives the individual *significant influence* over the *attest client*. [1.260.010]

c. A *member* or his or her *firm* relies excessively on fees from attest and nonattest services from a single *attest client*. [1.230.040]

d. A *member* or *member's firm* has a material joint venture or other material joint business arrangement with the *attest client*. [1.265]

[See Revision History Table.]

.17 *Self-review threat.* The *threat* that a *member* will not appropriately evaluate the results of a previous judgment made, or service performed or supervised by the *member* or an individual in the *member's firm* and that the *member* will rely on that service in forming a judgment as part of an *attest engagement*. Certain self-review *threats*, such as preparing *source documents* used to generate the *attest client's financial statements* [1.295.120], pose such a significant self-review *threat* that no *safeguards* can eliminate or reduce the *threats* to an *acceptable level*.

.18 *Undue influence threat.* The *threat* that a *member* will subordinate his or her judgment to that of an individual associated with an *attest client* or any relevant third party due to that individual's reputation or expertise, aggressive or dominant personality, or attempts to coerce or exercise excessive influence over the *member*. Examples of undue influence *threats* include the following:

a. Management threatens to replace the *member* or *member's firm* over a disagreement on the application of an accounting principle.

b. Management pressures the *member* to reduce necessary audit procedures in order to reduce audit fees.

c. The *member* receives a gift from the *attest client*, its management, or its significant shareholders. [1.285.010]

d. A large proportion of fees charged by the *firm* to an *attest client* is generated by providing nonattest services.

Safeguards

.19 *Safeguards* may partially or completely eliminate a *threat* or diminish the potential influence of a *threat*. The nature and extent of the *safeguards* applied will depend on many factors, including the size of the *firm* and whether the *attest client* is a *public interest entity*. To be effective, *safeguards* should eliminate the *threat* or reduce it to an *acceptable level*.

.20 The following are three broad categories of *safeguards*:

a. *Safeguards* created by the profession, legislation, or regulation.

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b. *Safeguards* implemented by the *attest client*. It is not possible to rely solely on *safeguards* implemented by the *attest client* to eliminate or reduce significant *threats* to an *acceptable level*.

c. *Safeguards* implemented by the *firm*, including policies and procedures to implement professional and regulatory requirements.

.21 The effectiveness of a *safeguard* depends on many factors, including those listed here:

a. The facts and circumstances specific to a particular situation

b. The proper identification of *threats*

c. Whether the *safeguard* is suitably designed to meet its objectives

d. The party(ies) that will be subject to the *safeguard*

e. How the *safeguard* is applied

f. The consistency with which the *safeguard* is applied

g. Who applies the *safeguard*

h. How the *safeguard* interacts with a *safeguard* from another category

i. Whether the *attest client* is a *public interest entity*

.22 Examples of various *safeguards* within each category are presented in paragraphs .21–.23 of the "Conceptual Framework for Members in Public Practice" [1.000.010]. The examples presented in these paragraphs are not intended to be all inclusive. In addition, *threats* may be sufficiently mitigated through the application of other *safeguards* not specifically identified in these paragraphs. [Prior reference: ET section 100-1]

Effective Date

.23 The addition of *partner equivalents* to paragraph .14*b* is effective for engagements covering periods beginning on or after December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Independence is available at https://us.aicpa.org/content/dam/aicpa/interestareas/professionalethics/resources/downloadabledocuments/toolkitsandaids/conceptual-framework-toolkit-for-independence-final.pdf.

Nonauthoritative questions and answers regarding senior personnel's long association on an attest engagement are available. See Ethics Questions and Answers (Q&A) sections 100.04–.05Ethics Questions and Answers (Q&A) sections 100.04–.05 of Q&A section 100, *Independence*.

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[See Revision History Table.]

1.220 Accounting Firms

A nonauthoritative question and answer regarding letter of intent to purchase practice is available. See Ethics Questions & Answers section 110.01Ethics Questions & Answers section 110.01, "Letter of Intent to Purchase Practice."

1.220.010 Network and Network Firms

General

.01 To enhance their capabilities to provide *professional services*, *firms* frequently join larger groups, which typically are membership associations that are separate legal entities and otherwise unrelated to their members. The associations facilitate their members' use of association services and resources. They do not themselves typically engage in *public practice* or provide *professional services* to their members' *clients* or other third parties.

.02 *Firms* and other entities in the association cooperate with the *firms* and other entities that are members of the association to enhance their capabilities to provide *professional services*. For example, a *firm* may become a member of an association in order to refer work to, or receive referrals from, other association members. That characteristic alone would not be sufficient for the association to constitute a *network* or for the *firm* to be considered a *network firm*.

.03 However, an association would be considered a *network* if, in addition to cooperation among member *firms* and other entities to enhance their capabilities to provide *professional services*, member *firms* and other entities share one or more additional characteristics described in paragraphs .07–.18 of this section. If an association is considered a *network* and an entity is considered a *network firm* the classification should be applied consistently by all members of the association. When determining if one or more additional characteristics exist, *members* should give due consideration to what a reasonable and informed third party who is aware of the relevant information would be expected to conclude.

.04 A *network firm* is required to comply with the "Independence Rule" [1.200.001] with respect to the financial statement audit and review *clients* of the other *network firms* if the use of the audit or review report for the *client* is not restricted, as defined by professional standards. For all other *attest clients*, the *covered member* should consider any *threats* that the *covered member* knows or has reason to believe may be created by another *network firm's* interests and relationships. If those *threats* are not at an *acceptable level*, the *covered member* should apply *safeguards* to eliminate the *threats* or reduce them to an *acceptable level*. If *safeguards* cannot be applied to eliminate or reduce the *threats* to an *acceptable level*, *independence* will be *impaired*. Entities within the *network* that meet the definition of a *network firm* are subject to the "Independence Rule."

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.05 The determination that a *firm* or other entity or an association of *firms* or other entities meets the definition of a *network firm* and *network* is solely for purposes of this interpretation and may not be used or relied upon in any other context. In particular, determining whether a *firm* or other entity is a *network firm* or whether an association of *firms* or other entities is a *network* for purposes of defining legal responsibilities from one *firm* to the other or to third parties is beyond the scope of this interpretation.

Characteristics of a Network

.06 When an association is formed for the purpose of cooperating to enhance the *firms'* capabilities to provide *professional services*, and one of the characteristics described in paragraphs .07–.18 of this section also applies, the association is considered to be a *network*.

.07 *Sharing a common brand name*. This characteristic exists when the association's members or entities *controlled* by the association's members share the use of a common brand name or share common initials as part of the *firm* name.

.08 A *firm* that does not use a common brand name as part of its *firm* name but makes reference in its stationery or promotional materials to being a member of an association of *firms* should carefully consider how it describes that membership and take steps to avoid the perception that it belongs to a *network*. The *firm* may wish to avoid such perception by clearly describing the nature of its membership in the association (for example, by stating on its stationery or promotional material that it is "an independently owned and operated member firm of XYZ Association").

.09 *Sharing common control.* This characteristic exists when entities within the association are under common *control* with other *firms* in the association through ownership, management, or other means (for example, by contract). However, compliance with association requirements as a condition of membership does not indicate that members are under common *control*; rather, it reflects the type of cooperation that is expected when an entity joins the association.

.10 *Sharing profits or costs.* This characteristic exists when entities within the association share profits or costs. Following are examples of profit and cost sharing that would not create a *network*:

a. Sharing immaterial costs

b. Sharing costs related to operating the association

c. Sharing costs related to the development of audit methodologies, manuals, and training courses

d. Arrangements between a *firm* and an otherwise unrelated entity to jointly provide a service or develop a product

.11 *Sharing a common business strategy.* This characteristic exists when entities within the association share a common business strategy. Sharing a common business strategy involves ongoing collaboration among the *firms* whereby the *firms* are responsible for implementing

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the association's strategy and held accountable for performance pursuant to that strategy. An entity's ability to pursue an alternative strategy may be limited by the common business strategy because, as a member, it must act in accordance with the common business strategy and, therefore, in the best interest of the association.

.12 An entity is not considered to be a *network firm* merely because it cooperates with another entity solely to market *professional services* or responds jointly to a request for a proposal for the provision of a *professional service*.

.13 *Sharing significant professional resources.* This characteristic exists when entities within the association share a significant part of professional resources. *Members* should consider both qualitative and quantitative factors in determining whether the shared professional resources are significant.

.14 Examples of professional resources include the following:

a. Common systems that enable *firms* to exchange information, such as *client* data, billing, and time records

b. *Partners* and staff

c. Technical departments to consult on technical or industry-specific issues, transactions, or events for assurance engagements

d. Audit methodology or audit manuals

e. Training courses and facilities

.15 When shared professional resources involve the exchange of *client* information or personnel, such as when staff are drawn from a shared pool or a common technical department is created within the association to provide participating *firms* with technical advice that the *firms* are required to follow, a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the shared professional resources are significant.

.16 When the entities within the association do not share a significant amount of human resources (for example, a *firm* occasionally uses personnel of another member *firm* to assist with an engagement, such as observing a *client's* physical inventory count) or significant *client* information (for example, *client* data, billing, and time records) and have the ability to make independent decisions regarding technical matters, audit methodology, training, and the like, the entities are not considered to be sharing a significant part of professional resources.

.17 When the shared professional resources are limited to a common audit methodology, audit manuals, training courses, or facilities and do not include a significant amount of human resources or *clients* or markets, the shared professional resources are not considered significant.

.18 *Sharing common quality management policies and procedures.* This characteristic exists when entities within the association are required to follow common quality

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management policies and procedures that the association monitors. Monitoring is the ongoing consideration and evaluation of the *firms'* systems of quality management, which enables the association to obtain reasonable assurance that the *firms'* systems of quality management are designed appropriately and operating effectively.

.19 Refer to paragraph .03*d* of the "Application of the AICPA Code" [0.200.020] for additional guidance. [Prior reference: paragraph .19 of ET section 101]

Nonauthoritative implementation guidance can be found at www.aicpa-cima.com/resources/download/network-firm-implementation-guidance.

Nonauthoritative case studies are available. See "Network firmsNetwork firms" in *Sample Case Studies*. Nonauthoritative questions and answers are also available. See Ethics Questions & Answers section 105Ethics Questions & Answers section 105, *Network and Network Firms*.

1.220.020 Alternative Practice Structures

.01 *Members* practicing public accounting in nontraditional practice structures (alternative practice structures [APS]) should apply this interpretation to determine whether they are in compliance with the "Independence Rule" [1.200.001].

.02 All such structures must be organized in a form that complies with applicable laws, rules, and regulations, the "Form of Organization and Name Rule" [1.800.001] and the related "Alternative Practice Structures" interpretation [1.810.050] of the "Form of Organization and Name Rule."

.03 For example, in an APS, a substantial piece of the nonattest portion of a *member's* practice may be conducted under public or private ownership, and the attest portion of the practice may be conducted through a separate *firm* that the *member* owns and *controls*.

Terminology

.04 The following terms are defined solely for the purpose of applying this interpretation:

a. APS is a form of organization in which a *firm* that provides attest services is closely aligned with another public or private organization that performs other *professional services*.

b. A covered member includes both employed and leased individuals who meet the definition of a *covered member*.

c. The term direct superiors includes those persons so closely associated with a *partner* or *manager* who is a covered member that such persons can directly control the *partner's* or *manager's* activities. For this purpose, a person who can directly control

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is the immediate superior of the *partner* or *manager* who has the power to direct the activities of that person so as to be able to directly or indirectly (for example, through another entity over which the direct superior can exercise significant influence) derive a benefit from that person's activities. An example is the person who has day-to-day responsibility for the activities of the *partner* or *manager* and is in a position to recommend promotions and compensation levels. This group of persons is so closely aligned through direct reporting relationships that their interests seem to be inseparable.

d. Indirect superiors are not connected with *partners* and *managers* who are covered members through direct reporting relationships; rather, they are one or more levels above direct superiors of covered members (that is, there always is a level in between). Generally, this starts with persons in an organization structure to whom direct superiors report and go up the line from there. Indirect superiors also include the *immediate family* of indirect superiors.

e. Other public company entities include the public company and all entities consolidated in the public company *financial statements* that are not subject to the "Independence Rule" [1.200.001] and its *interpretations* in their entirety.

f. Significant influence is having the ability to exercise significant influence over the financial, operating, or accounting policies of the entity by, for example

   i. being connected with the entity as a promoter, an underwriter, a voting trustee, a general partner, or a director;

   ii. being in a policy-making position, such as chief executive officer, chief operating officer, chief financial officer, or chief accounting officer; or

   iii. meeting the criteria in Financial Accounting Standards Board (FASB) *Accounting Standards Codification* (ASC) 323-10-15 to determine the ability of an investor to exercise such influence with respect to an entity.

APS Model

.05 The APS described in paragraphs .06–.07 in this section and the related chart provides an example of a structure in use at the time that this interpretation was developed. Many of the references in this interpretation are to the example, but *members* should apply the concepts in spirit and substance to variations of the example structure as they develop.

.06 The example APS in this interpretation is one in which an existing CPA practice (Oldfirm) is sold by its owners to another (possibly public) entity (PublicCo). PublicCo has subsidiaries or divisions, such as a bank, an insurance company, or a broker-dealer. It also has one or more professional service subsidiaries (PSS) or divisions that offer nonattest services (for example, tax, personal financial planning, and management consulting) to *clients*. The owners and employees of Oldfirm become employees of one of PublicCo's subsidiaries or divisions and may provide those nonattest services. In addition, the owners of Oldfirm form a new CPA *firm* (Newfirm) to provide attest services. CPAs, including the former owners of Oldfirm, own a majority of Newfirm (with regard to voting and financial interests). Attest services are performed by Newfirm and supervised by its owners.

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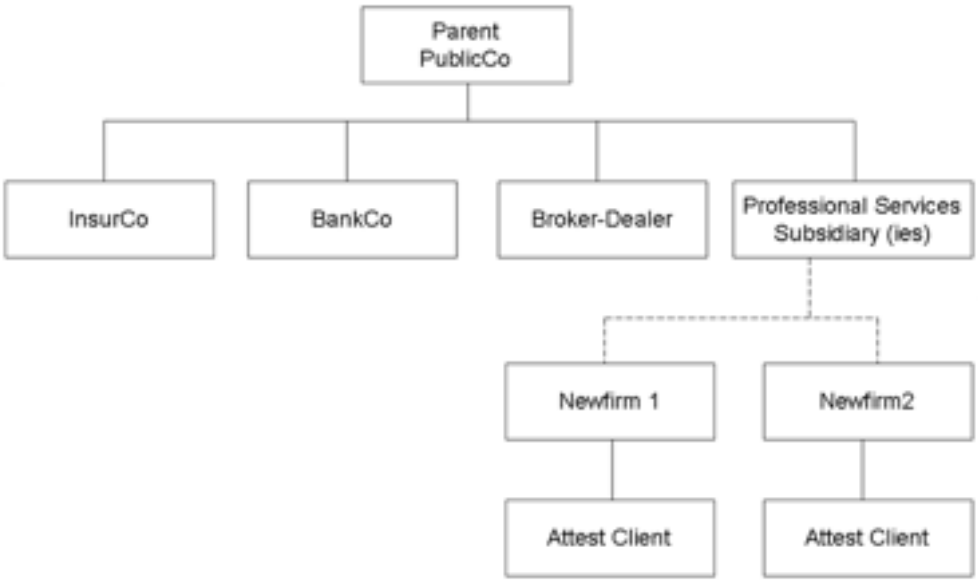
The arrangement between Newfirm and PublicCo (or one of its subsidiaries or divisions) includes the lease of employees, office space, and equipment; the performance of back-office functions, such as billing and collections; and advertising. Newfirm pays a negotiated amount for these services.

.07 The chief executive of the local office of the PSS where the *partners* of Newfirm are employed would be a direct superior. The chief executive of the PSS itself would be an indirect superior, and there may be indirect superiors in between, such as a regional chief executive of all PSS offices within a geographic area.



Interpretation

.08 The "Independence Rule" [1.200.001] and *interpretations* normally extend only to those persons and entities included in the definition of *covered members*. However, in an APS environment, the self-interest, management participation, self-review, advocacy, or undue influence *threats* to a *covered member's* compliance with the "Independence Rule" may not be at an *acceptable level* unless certain *safeguards* are implemented by other individuals or entities.

.09 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*, could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired* when the following individuals or entities fail to apply the "Independence Rule" and *interpretations* with respect to *attest clients* of Newfirm:

a. Covered members of Newfirm

b. Direct superiors of any *partner* or *manager* who is a covered member of Newfirm and entities within the APS over which such individuals can exercise *significant influence*

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.10 In addition, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*, could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired* in the following circumstances:

a. Indirect superiors and other public company entities have a material relationship with an *attest client* of Newfirm that is prohibited by the "Overview of Financial Interests" interpretation [1.240.010], the "Trustee or Executor" interpretation [1.245.010], the "Loans" interpretation [1.260.010], or the "Joint Closely Held Investments" interpretation [1.265.020] of the "Independence Rule" (for example, investments, *loans*, and so on). In making the test for materiality for financial relationships of an indirect superior, all the financial relationships with an *attest client* held by that person should be aggregated and, to determine materiality, assessed in relation to the person's net worth. In making the materiality test for financial relationships of other public company entities, all the financial relationships with an *attest client* held by such entities should be aggregated and, to determine materiality, assessed in relation to the consolidated *financial statements* of PublicCo.

b. Any other public company entity over which an indirect superior has direct responsibility has a financial relationship with an *attest client* during the *period of the professional engagement* that is material in relation to the other public company entity's *financial statements*.

c. Financial relationships of indirect superiors or other public company entities allow such persons or entities to exercise significant influence over the *attest client* during the *period of the professional engagement.* In making the test for significant influence, financial relationships of all indirect superiors and other public company entities should be aggregated.

d. Other public company entities or any of their employees are connected with an *attest client* of Newfirm as a promoter, an underwriter, a voting trustee, a director, or an officer during the *period of the professional engagement* or during the period covered by the *financial statements*.

.11 Indirect superiors and other public company entities may provide services to an *attest client* of Newfirm that would *impair independence* if performed by Newfirm, except as noted in paragraph .10*d*.

.12 When Newfirm and its *partners* and professional employees perform *attest engagements* for PublicCo or any of its subsidiaries or divisions, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.13 If an *attest client* of Newfirm holds an investment in PublicCo that is material to the *attest client* or that allows the *attest client* to exercise significant influence over PublicCo during the *period of the professional engagement*, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards*. Accordingly, *independence* would be *impaired*.

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.14 When making referrals of services between Newfirm and any of the entities within PublicCo, a *member* should consider the provisions of the "Conflicts of Interest" interpretation [1.110.010] of the "Integrity and Objectivity Rule" [1.100.001] and the "Alternative Practice Structures" interpretation [1.810.050] of the "Form of Organization and Name Rule" [1.800.001]. [Prior reference: paragraph .16 of ET section 101]

1.220.030 Use of a Nonindependent CPA Firm on an Engagement

.01 If *partners* or professional employees from another *firm* that was not independent of an *attest client* participate on the *attest engagement team*, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards*. Accordingly, the *firm's independence* would be *impaired*.

.02 However, the *firm* may use the work of such individuals in a manner similar to internal auditors, provided that the *firm* complies with AU-C section 610, *Using the Work of Internal Auditors* (AICPA, *Professional Standards*). [Prior reference: paragraphs .142–.143 of ET section 191]

1.220.040 Firm Mergers and Acquisitions

.01 When (1) a *member's firm* merges with or acquires another *firm* or entity or all or part of the business thereof (acquired firm) or (2) a *member's firm*, or all or part of the business thereof, is merged with or acquired by another *firm* (acquiring firm), *threats* to compliance with the "Independence Rule" [1.200.001] may exist as a result of employment or association with, or the provision of nonattest services to, an *attest client* of the acquired or acquiring firm.

.02 When determining which *firm* is the acquirer, *members* should consider the guidance contained in paragraphs 11–15 of FASB ASC 805-10-55, among other sources.

Employment or Association With an Attest Client

.03 If a *partner* or professional employee was formerly employed by or associated with an entity as a director, officer, employee, promoter, underwriter, voting trustee, trustee of any pension or profit-sharing trust of the entity, or in any capacity equivalent to that of a member of management and that entity becomes an *attest client* through a merger or acquisition, then *threats* will be at an *acceptable level* and *independence* will not be *impaired* provided all of the following *safeguards* are met:

a. The *partner* or professional employee terminates the relationship with the *attest client* (for example, resigns as a director) prior to the closing date of the merger or acquisition.

b. The *partner* or professional employee does not participate on the *attest engagement team* and is not an *individual in a position to influence the attest engagement* for the *attest client* when the *attest engagement* covers any period that includes his or her former employment or association with that *attest client*.

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c. The applicable disassociation *safeguards* in paragraph .04 of the "Former Employment or Association With an Attest Client" interpretation [1.277.010] are implemented prior to the closing date of the merger or acquisition.

d. As soon as practicable under the circumstances but before issuing the attest report, a responsible individual within the *firm* assesses the prior relationship of the *partner* or professional employee with the *attest client*, as well as the position he or she holds at the *firm*, to determine if *threats* are created that are not at an *acceptable level*. If the responsible individual determines that *threats* are not at an *acceptable level*, he or she should be satisfied that *safeguards* are applied to eliminate or reduce the *threats* to an *acceptable level*. *Threats* will not be at an *acceptable level* if

   i. the *partner* or professional employee will have interaction with members of the *attest engagement team* regarding the *attest client* or

   ii. the *attest engagement team* is placed in a position of evaluating the *partner* or professional employee's representations and work while he or she was employed or associated with the *attest client*.

   In such situations, an individual within the *firm* with the appropriate stature, expertise, and objectivity should review the subsequent *attest engagement* prior to issuing the attest report to determine whether the *attest engagement team* maintained integrity; objectivity; and, as appropriate, professional skepticism.

e. As soon as practicable under the circumstances but before issuing the attest report, the nature of the relationship and any *safeguards* that were applied are discussed with *those charged with governance*. Documentation of the substance of the discussion with *those charged with governance* is encouraged.

Nonattest Services

.04 Nonattest services provided to an entity that becomes an *attest client* through a merger or an acquisition may create self-review, management participation, and advocacy *threats* to the *member's* compliance with the "Independence Rule" [1.200.001]. Specifically, *threats* may exist if, during the *period of the professional engagement* or the period covered by the *financial statements*, nonattest services that would otherwise *impair independence* (prohibited nonattest services) under the interpretations of the "Nonattest Services" subtopic [1.295] are performed by

a. the acquiring firm, with respect to an *attest client* of the acquired firm or

b. the acquired firm, with respect to an *attest client* of the acquiring firm.

Prohibited Nonattest Services Provided by Acquiring Firm

.05 If the acquiring firm provided prohibited nonattest services to an *attest client* of the acquired firm during the period covered by the *financial statements*, *threats* to compliance with the "Independence Rule" [1.200.001] will not be at an *acceptable level* and cannot be

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reduced to an *acceptable level* by the application of *safeguards*. Accordingly, the acquiring firm's *independence* will be *impaired* with respect to the *attest client*.

Prohibited Nonattest Services Provided by Acquired Firm

.06 If the acquired firm provided prohibited nonattest services to an *attest client* of the acquiring firm prior to the financial statement period covered by the acquiring firm's next attest report, the acquiring firm's *independence* would not be *impaired*.

.07 If the acquired firm provided prohibited nonattest services to an *attest client* of the acquiring firm during the *period of the professional engagement* (except as provided for in paragraph .06) or the period covered by the *financial statements*, the acquiring firm's *independence* would be *impaired* unless all of the following conditions are satisfied:

a. The acquired firm terminates the prohibited nonattest services (or modifies the service offerings such that they would not *impair independence*) prior to the closing date of the merger or acquisition.

b. Any individual who participated in the engagement to provide the prohibited nonattest services is neither on the *attest engagement team* nor an *individual in a position to influence the attest engagement*.

c. An evaluation of the *threats* is performed and *threats* are determined to be at an *acceptable level* or reduced to an *acceptable level* by the application of *safeguards*. The evaluation should be conducted on the basis of the attribution of the results of the nonattest services to the acquiring firm. That is, if the nonattest services

    i. can be attributed to the acquiring firm because the acquiring firm will assume responsibility for the results of the nonattest services, then the evaluation should assess all prohibited nonattest services that the acquired firm performed for the *attest client* during the financial statement period to be covered by the acquiring firm's next attest report; or

    ii. cannot be attributed to the acquiring firm, then the evaluation should assess all prohibited nonattest services that the acquired firm performed for the *attest client* during the period in which the merger or acquisition was pending (that is, from the commencement of negotiations through the closing date of the merger or acquisition).

.08 In evaluating the significance of any *threats*, consideration should also be given to the following:

a. Whether the nonattest service is attributed to the acquiring firm and whether the work performed or its results will be subject to attest procedures.

b. The significance of the results of the nonattest service to the *attest client's financial statements*.

c. The extent to which the *attest client* and its management were involved in overseeing the nonattest services performed (including making any significant judgments and

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decisions with respect to the nonattest services) and whether the *attest client* and its management possessed the suitable skill, knowledge and/or experience to oversee such services.

d. Whether the nonattest services involved the assumption of a management responsibility.

.09 If the *member* concludes that the *threats* to *independence* are not at an *acceptable level*, the *member* should apply *safeguards* to reduce *threats* to an *acceptable level*.

.10 Examples of *safeguards* include the following:

a. An individual not associated with the nonattest engagement reviews the nonattest services work performed.

b. Another *firm* performs an *attest engagement* on the subject matter of the nonattest service.

c. Another *firm* re-performs the nonattest service to the extent necessary for it to take responsibility for that service.

If no *safeguards* exist that will eliminate or reduce the *threats* to an *acceptable level*, *independence* will be *impaired*.

Communications With Those Charged With Governance

.11 As soon as practicable under the circumstances but before issuing the attest report, the nature of the prohibited nonattest services performed by the acquired firm that are subject to evaluation in paragraph .07*c* and any *safeguards* applied should be discussed with *those charged with governance*. Documentation of the substance of the discussion with *those charged with governance* is encouraged.

Other Interests in and Relationships With an Attest Client

.12 This interpretation addresses only *threats* to *independence* that may arise as a result of a merger or an acquisition relating to employment or association with, or the provision of nonattest services to, an *attest client*. However other interests in, and relationships with, an *attest client* may also result in *threats* to compliance with the "Independence Rule" [1.200.001] or other rules during a merger or acquisition. Accordingly, *members* should take whatever pre-merger actions are necessary to be satisfied that the *firm* is in compliance with all relevant rules prior to the closing date of the merger or acquisition.

Confidentiality Considerations

.13 Refer to the "Disclosing Client Information in Connection With a Review of the Member's Practice" interpretation [1.700.050] of the "Confidential Client Information Rule" [1.700.001] for additional guidance.

Effective Date

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.14 This interpretation is effective for mergers or acquisitions with closing dates on or after January 31, 2016. Early implementation is allowed.

1.224 Affiliates, Including State and Local Government Affiliates

1.224.010 Client Affiliates

.01 *Financial interests* in, and other relationships with, *affiliates* of a *financial statement attest client* may create *threats* to a *member's* compliance with the "Independence Rule" [1.200.001].

September 2025

Conforming changes to the following paragraph, shown in grey-shaded text, are effective September 15, 2026.

.02 When a *client* is a *financial statement attest client*, *members* should apply the "Independence Rule" [1.200.001] and related *interpretations* applicable to the *financial statement attest client* to their *affiliates*, except in the following situations:

a. During the *period of the professional engagement*, a *covered member* may have a *loan* to or from an

   i. officer or director of an *affiliate* of a *financial statement attest client*, unless the officer or director has the ability to affect the decision-making at the *financial statement attest client*.

   ii. individual with a *beneficial ownership interest* (known through reasonable inquiry) in an *affiliate* of a *financial statement attest client*, unless the ownership interest gives the individual *significant influence* over the *financial statement attest client*.

b. A *member* or the *member's firm* may provide prohibited nonattest services to entities described under items *c–l* of the definition of *affiliate* during the *period of the professional engagement* or during the period covered by the *financial statements*, provided that it is reasonable to conclude that the services do not create a self-review *threat* with respect to the *financial statement attest client* because the results of the nonattest services will not be subject to *financial statement* attest procedures. For any other *threats* that are created by the provision of the nonattest services that are not at an *acceptable level* (in particular, those relating to management participation), the *member* should apply *safeguards* to eliminate or reduce the *threats* to an *acceptable level*.

c. A *firm* will have to apply the "Subsequent Employment or Association With an Attest Client" interpretation [1.279.020] of the "Independence Rule" only if the former

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employee, by virtue of his or her employment at an entity described under items *c–l* of the definition of *affiliate*, is in a *key position* with respect to the *financial statement attest client*. *Individuals in a position to influence the attest engagement* and on the *attest engagement team* who are considering employment with an *affiliate* of a *financial statement attest client* will still need to report consideration of employment to an appropriate person in the *firm* and remove themselves from the *financial statement attest engagement*, even if the position with the *affiliate* is not a *key position*.

d. A *covered member's immediate family* members and *close relatives* may be employed in a *key position* at an entity described under items *c–l* of the definition of *affiliate* during the *period of the professional engagement* or during the period covered by the *financial statements*, provided they are not in a *key position* with respect to the *financial statement attest client*.

e. A *covered member* who is an individual on the *attest engagement team*, an *individual in a position to influence the attest engagement*, or the *firm* may have a lease that does not meet the requirements of the "Leases" interpretation [1.260.040] under the "Independence Rule" with an entity described under items *c–l* of the definition of *affiliate* during the *period of the professional engagement*. The *covered member* should use the "Conceptual Framework for Independence" to evaluate whether any *threats* created by the lease are at an *acceptable level*. If the *covered member* concludes that *threats* are not at an *acceptable level*, the *covered member* should apply *safeguards* to eliminate the *threats* or reduce them to an *acceptable level*.

f. A *member* or *member's firm* may enter into a staff augmentation arrangement with entities described under items *c–l* of the definition of *affiliate* during the *period of the professional engagement* or during the period covered by the *financial statements*. The *member* should use the "Conceptual Framework for Independence" to evaluate whether any *threats* created by the staff augmentation arrangement are at an *acceptable level*. If the *member* concludes that threats are not at an *acceptable level*, the *member* should apply *safeguards* to eliminate the *threats* or reduce them to an *acceptable level*. If *safeguards* are not available or cannot be applied to eliminate or reduce the *threats* to an *acceptable level*, the *member* should not enter into the staff augmentation arrangement.

g. For purposes of applying the "Fee Dependency" interpretation [1.230.040], fees from entities described under items *b–l* of the definition of *affiliate* are not required to be included when calculating the total fees generated from a *financial statement attest client*. When the *covered member* knows, or has reason to believe, that a relationship or circumstance involving any of the entities described under items *b–l* of the definition of *affiliate* is relevant to the evaluation of a fee dependency, the *covered member* shall include that *affiliate* when identifying, evaluating, and addressing *threats* related to fee dependency.

h. A *member* may enter into a relationship in which that member becomes *simultaneously employed or associated* with entities described under items (c)–(l) of the definition of *affiliate* during the *period of the professional engagement*. Prior to entering into the relationship, the *member* should use the "Conceptual Framework

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for Independence" interpretation [1.210.000] to evaluate whether any *threats* created by the relationship are at an *acceptable level*. If the *member* concludes that one or more threats are not at an *acceptable level*, the *member* should apply *safeguards* to eliminate the threats or reduce them to an *acceptable level*. If *safeguards* are not available or cannot be applied to eliminate or reduce the *threats* to an *acceptable level*, the *member* should not enter into the relationship.

[See Revision History Table.]

.03 A *member* must expend best efforts to obtain the information necessary to identify the *affiliates* of a *financial statement attest client*. If, after expending best efforts, a *member* is unable to obtain the information to determine which entities are *affiliates* of a *financial statement attest client*, *threats* would be at an *acceptable level* and *independence* would not be *impaired* if the *member* (*a*) discusses the matter, including the potential impact on *independence*, with *those charged with governance*; (*b*) documents the results of that discussion and the efforts taken to obtain the information; and (*c*) obtains written assurance from the *financial statement attest client* that it is unable to provide the *member* with the information necessary to identify the *affiliates* of the *financial statement attest client*.

.04 This interpretation does not apply with respect to a *financial statement attest client* that is covered by the "State and Local Government Client Affiliates" interpretation [1.224.020] of the "Independence Rule" [1.200.001]. [Prior reference: paragraph .20 of ET section 101]

Acquisition or Other Transaction Involving a Financial Statement Attest Client or Its Affiliates That Results in the Creation of a New Affiliate

.05 An entity may become a new *affiliate* of an existing *financial statement attest client* because of an acquisition or other transaction. A *threat* to *independence* and, therefore, to the ability of a *member* or *member's firm* to continue a *financial statement attest engagement* might be created by previous or current interests or relationships between the *member* or *member's firm* and the new *affiliate*. Paragraphs .06–.13 provide guidance on how *independence* is affected when such interests in or relationships with a new *affiliate* exist.

An Existing Financial Statement Attest Client Is Acquired and the Member or Member's Firm Will Not Continue Providing Financial Statement Attest Services to Such Client After the Current Attest Report Is Issued and the Report Does Not Cover Periods After the Effective Date of the Acquisition

.06 When a *member* or *member's firm* has an interest in or relationship with an acquirer that may *impair independence* as a result of the requirements of this interpretation, *independence* with respect to the *financial statement attest client* will not be considered *impaired* if all the following conditions are met:

a. The acquisition occurs during the *period of the professional engagement*.

b. The *financial statement attest engagement* covers only periods prior to the effective date of the acquisition.

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c. The *member* or *member's firm* will not continue to provide *financial statement* attest services to the existing *financial statement attest client* for periods after the effective date of the acquisition.

An Existing Financial Statement Attest Client or Its Affiliate Is Involved in an Acquisition or Other Transaction and the Member or Member's Firm Expects to Continue Providing Financial Statement Attest Services to Such Client

.07 When an acquisition or other transaction creates a new *affiliate* of a *financial statement attest client* during the *period of the professional engagement* and the *member* or *member's firm* expects to continue providing *financial statement* attest services to the *financial statement attest client* after the effective date of the acquisition or other transaction, the following conditions should be met:

a. The *member* or *member's firm* should identify and evaluate previous and current interests in and relationships with the new *affiliate*, including actions taken to address the *threat* to *independence*, that might affect *independence* and therefore the *member's* or *member's firm's* ability to continue the *financial statement attest engagement* after the effective date of the acquisition or other transaction.

b. Except as provided for in paragraph .08, the *member* or *member's firm* should take steps to end any interests in or relationships with the new *affiliate* that would *impair independence* by the effective date of the acquisition or other transaction.

.08 As an exception to paragraph .07*b*, if the interest in or relationship with the new *affiliate* cannot reasonably be ended by the effective date of the acquisition or other transaction (for example, the new *affiliate* is not able to transition a nonattest service in an orderly manner to another service provider by that date), the *member* or *member's firm* should do the following:

a. Evaluate the *threat* to *independence* that is created by the interest or relationship. Factors that are relevant in evaluating the significance of a *threat* when there are interests and relationships with a new *affiliate* that cannot reasonably be ended could include these:

    i. The nature and significance of the interest or relationship

    ii. The nature and significance of the *affiliate* relationship (for example, whether the *affiliate* is a subsidiary, parent, or sister entity)

    iii. The length of time until the interest or relationship can reasonably be ended

b. Discuss with *those charged with governance* the evaluation of the significance of *threat* and the reasons that the interest or relationship cannot reasonably be ended by the effective date of the acquisition or other transaction.

.09 Following the discussion in paragraph .08*b*, if *those charged with governance* request the *member* or *member's firm* to continue to provide *financial statement* attest services to the

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financial statement attest client, the *member* or *member's firm* should do so only under the following circumstances:

a. The interest in or relationship with the new *affiliate* that would *impair independence* will end as soon as reasonably possible but no later than six months after the effective date of the acquisition or other transaction.

b. Any individual who has such an interest in or relationship with the new *affiliate*, including one that has arisen through performing a nonattest service that would *impair independence* under the "Nonattest Services" subtopic [1.295] of the "Independence Rule" [1.200.001], will not be a member of the *attest engagement team* or an individual responsible for the engagement quality review.

c. *Safeguards* will be applied, as necessary, and discussed with *those charged with governance*.

An Existing Financial Statement Attest Client or Its Affiliate Is Involved in an Acquisition or Other Transaction and the Member or Member's Firm Will Complete the Existing Financial Statement Attest Engagement but Will Not Continue Providing Such Services After the Current Attest Report Is Issued but the Report May Cover Periods After the Effective Date of the Acquisition or Other Transaction

.10 When a *member* or *member's firm* will not continue to provide *financial statement* attest services to the *financial statement attest client* that is involved in an acquisition or other transaction, the *member* or *member's firm* may issue the current report covering a period after the effective date of the acquisition or other transaction if all the following conditions are met:

a. The *member* or *member's firm* completed a significant amount of work on the current *financial statement attest engagement* prior to the effective date of the acquisition or other transaction. Whether a significant amount of work has been completed will depend upon the remaining procedures as compared to the overall engagement procedures.

b. The *member* or *member's firm* expects to complete the remaining *financial statement* attest procedures and issue the attest report within a reasonable period of time. A reasonable period of time will be dependent upon facts and circumstances.

c. *Those charged with governance* request that the *member* or *member's firm* complete the *financial statement attest engagement* despite the *member* or *member's firm* continuing to have an interest in or relationship with the new *affiliate* that will *impair independence*.

d. The *member* or *member's firm* has evaluated the significance of the *threat* to *independence* and discussed the results with *those charged with governance*.

e. The *member* or *member's firm* complies with the requirements of paragraph .09*b*–*c*.

f. The *member* or *member's firm* ceases to be the auditor no later than the date that the attest report is issued.

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Other Considerations When an Existing Financial Statement Attest Client or Its Affiliate Is Involved in an Acquisition or Other Transaction

.11 *Objectivity.* Even if all the requirements of paragraphs .06–.10 could be met, the *member* or *member's firm* should consider whether the requirements of the "Conflicts of Interest for Members in Public Practice" interpretation [1.110.010] under the "Integrity and Objectivity Rule" [1.100.001] are applicable, with regard to any circumstances identified in paragraphs .06, .07, or .10.

.12 *Documentation.* The *member* or *member's firm* should consider documenting the following:

a. Any interests or relationships identified in paragraphs .07 or .10 that will not be ended by the effective date of the acquisition or other transaction and the reasons they will not be ended

b. The *safeguards* applied, if appropriate

c. The results of the discussion with *those charged with governance*

d. The reasons the previous and current interests and relationships do not create a *threat* that will compromise objectivity

.13 *Circumstances involving foreign network firms.* A *member* should refer to paragraph .03 of "Application of the AICPA Code" [0.200.020] for guidance on circumstances involving foreign *network firms*.

Effective Date

.14 Paragraphs .01–.04 are effective for engagements covering periods beginning on or after January 1, 2014. Early implementation is allowed.

[See Revision History Table.]

Nonauthoritative questions and answers regarding the application of the independence rules to affiliates of employee benefit plans are available. See Ethics Questions & Answers section 120Ethics Questions & Answers section 120, *Affiliates*.

1.224.020 State and Local Government Client Affiliates

Applicability

.01 This interpretation applies to state and local government entities (as defined in paragraph .03*d* of this interpretation) that are *financial statement attest clients*.

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.02 When an *interpretation* of the "Independence Rule" [1.200.001] is applied in a state or local government environment and the *interpretation* uses terminology that is not applicable in this environment, the *member* should use professional judgment to determine if there is an equivalent term. For example, certain *interpretations* use the phrase "officer, director, or owner of the *attest client*." In some state or local government environments, it may be necessary for the *member* to extend these *interpretations* to officials of the *financial statement attest client* when the official has governance responsibilities or control over financial reporting.

Terminology

.03 The following terms are defined here solely for use with this interpretation:

a. An affiliate of a *financial statement attest client* exists in all the following situations:

   i. The entity is included in the *financial statement attest client's financial statements* and the *member* or *member's firm* does not make reference to another auditor's report on the entity.

   ii. The entity is included in the *financial statement attest client's financial statements*, the *member* or *member's firm* makes reference to another auditor's report on the entity, and

      1. the entity is material to the *financial statement attest client's financial statements* as a whole and

      2. the *financial statement attest client* has more than minimal influence over the entity's accounting or financial reporting process. There is a rebuttable presumption that the *financial statement attest client* has more than minimal influence over the accounting or financial reporting process of funds and blended component units.

   iii. The entity is a material excluded entity, and the *financial statement attest client* has more than minimal influence over the entity's accounting or financial reporting process. A material excluded entity is an entity that is required under the applicable financial reporting framework to be included in the *financial statements* of the *financial statement attest client* but is, nevertheless, excluded by the *financial statement attest client* and is material to the *financial statement attest client's financial statements* as a whole. There is a rebuttable presumption that the *financial statement attest client* has more than minimal influence over the accounting or financial reporting process of funds and blended component units.

   iv. The investor, which is either the *financial statement attest client* or an affiliate as defined in item (i) of this definition, has an investment in an investee when the investor either

      1. *controls* the investee, unless the investment in the investee is trivial and clearly inconsequential to the *financial statement attest client's financial statements* as a whole, or

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2. has *significant influence* over the investee and the investment in the investee is material to the *financial statement attest client's financial statements* as a whole.

b. An entity is intended to be broadly defined and can include funds, component units, departments, agencies, programs, organizational units, fiduciary activities, custodial activities, employee benefit plans, and suborganizational units of the preceding entities.

c. An investment is a security or other asset that an investor, which is either the *financial statement attest client* or an affiliate, as defined in item (*a*i) of this paragraph, holds primarily for the purpose of income or profit and has a present-service capacity based solely on its ability to generate cash or to be sold to generate cash. This includes investments and ownership of an equity interest in common stock accounted for using the equity method of accounting as provided for in GASB Codification Section I50. The following interests are not considered investments for purposes of this interpretation:

   i. Interests obtained by an investor as a result of an action by a third party, such as through a bequest or a grant, and that the investor does not intend to retain and does not retain for more than a reasonable period of time given the temporary nature of the investment

   ii. Equity interests in joint ventures, partnerships, LLCs, or other types of entities where the investor's principal purpose is to directly enhance its ability to provide governmental services

   iii. Equity interests in component units where the investor's principal purpose is to directly enhance its ability to provide governmental services

   iv. Interests that would otherwise be considered an entity as defined in item (*b*) of this paragraph

d. State and local government entities are entities whose generally accepted accounting principles standard setter is GASB. Examples of state and local government entities include general purpose governments and special purpose governments. Examples of general purpose governments include states, counties, cities, towns, villages, and Indian tribes. Examples of special purpose governments include cemetery districts, school districts, universities and colleges, utilities, hospitals or other health care organizations, public airports, public housing authorities, financing authorities, public transportation systems, public employee retirement systems (PERSs), post-employment benefit plans, pension plans, public-entity risk pools, external investment pools, state tuition programs, and other special districts.

Interpretation

.04 *Financial interests* in, and other relationships with, affiliates of a *financial statement attest client* may create *threats* to a *member's* compliance with the "Independence Rule."

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.05 *Members* should apply the "Independence Rule" and related *interpretations* applicable to a *financial statement attest client* to their affiliates except as provided for in paragraph .07 of this interpretation.

.06 However, if the *member* encounters circumstances or relationships that may create *threats* to *independence*, the *member* should apply the "Conceptual Framework for Independence" [1.210.010] to evaluate whether *threats* are at an *acceptable level*. Examples of such circumstances or relationships could include the following:

a. A *covered member'simmediate family* member is in a *key position* with a nonaffiliate that includes the *financial statement attest client* in its *financial statements* and the nonaffiliate provides accounting staff, shares financial information systems, or establishes internal controls over financial reporting for the *financial statement attest client*.

b. The *member* or *member's firm* is considering providing financial information system design services to a nonaffiliate in which the same financial information system would also be used by the *financial statement attest client*.

c. A *covered member* has a *financial interest* in a nonaffiliate that includes the *financial statement attest client* in its *financial statements*, and the nonaffiliate prepares the *financial statements* for the *financial statement attest client*.

d. The *financial statement attest client* participates in a public-private partnership or joint venture that does not meet the definition of an investment in paragraph .03*c* of this interpretation. A *covered member* has a *financial interest* in an organization that is also involved with the public-private partnership or joint venture.

e. A *covered member* owns utility bonds issued by a nonaffiliate, and the *financial statement attest client* is responsible for payment of the utility bond debt service.

f. A *covered member* owns conduit debt issued by the *financial statement attest client* on behalf of a nonaffiliate. The conduit debt is not accounted for on the *financial statements* of the *financial statement attest client*, and the debt service is paid by the nonaffiliate.

Exception

.07 The *member* and *member's firm* may provide prohibited nonattest services to entities described under items (*a*ii) and (*a*iii) of paragraph .03 during the *period of the professional engagement* or during the period covered by the *financial statements* provided that it is reasonable to conclude that the services do not create a self-review *threat* with respect to the *financial statement attest client* because the results of the nonattest services will not be subject to the *covered member's* financial statement attest procedures. For any other *threats* created by the provision of the nonattest services that are not at an *acceptable level* (in particular, those relating to management participation), the *member* should apply *safeguards* to eliminate or reduce the *threats* to an *acceptable level*.

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Best Efforts

.08 A *member* must expend best efforts to obtain the information necessary to identify affiliates of a *financial statement attest client*. If, after expending best efforts, a *member* is unable to obtain the information to determine which entities are affiliates of a *financial statement attest client*, *threats* would be at an *acceptable level* and *independence* would not be *impaired* if the *member*

a. discusses the matter, including the potential impact on *independence*, with *those charged with governance*;

b. documents the results of that discussion and the efforts taken to obtain the information; and

c. obtains written assurance from the *financial statement attest client* that it is unable to provide the *member* with the information necessary to identify the affiliates of the *financial statement attest client*.

More Than Minimal Influence Over Accounting and Financial Reporting Process

.09 The overall facts and circumstances should be considered when evaluating the level of influence the *financial statement attest client* has over the accounting or financial reporting process of an entity in the *financial statement attest client's financial statements*. The targeted analysis is applied solely to the accounting and financial reporting process of the entity as opposed to the analysis of what entities are included in the *financial statement attest client's financial statements*. Factors such as the following may assist *members* with this evaluation:

a. The extent of involvement the *financial statement attest client* has in preparing the *financial statements* of the entity

b. The extent of operational control the *financial statement attest client* has over the entity

c. The extent to which both the *financial statement attest client* and the entity have the same
    i. accounting or finance staff;
    ii. accounting systems; and
    iii. internal control over financial reporting systems

d. The extent to which the *financial statement attest client*
    i. can direct the behaviors or actions of the governing board of the entity;
    ii. can add or remove members of the governing board of the entity;
    iii. issues or pays for the entity's debt;
    iv. finances the entity's deficits; and

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v. uses or takes the entity's financial resources

.10 Whereas some factors may indicate influence, others may indicate little to no influence. Some factors may be weighted differently depending on the circumstances and the subject matter of any potential impairment. *Members* should take a substantive approach to evaluating the factors (for example, the *financial statement attest client* exercises a right) rather than merely considering form (for example, the *financial statement attest client* has a right that is not exercised). The consideration of these factors will require the *member* to exercise professional judgment when determining whether more than minimal influence exists.

Material to the Financial Statement Attest Client's Financial Statements as a Whole

.11 Determination of materiality is a matter of professional judgment. *Members* should consider both quantitative and qualitative factors when determining whether an entity or investment is material to a *financial statement attest client's financial statements* as a whole. For purposes of this interpretation, materiality is intended to be applied at the level of the *financial statement attest client's financial statements*, rather than individual opinion units in circumstances in which there may be more than one opinion unit.

[See Revision History Table.]

A nonauthoritative implementation guide to help understand which entities are affiliates of state and local government financial statement attest clients is available at www.aicpa-cima.com/resources/download/implementation-guide-state-and-local-government-client-affiliates. Additional related nonauthoritative tools include an excel template www.aicpa-cima.com/resources/download/state-and-local-government-affiliates-tool.

1.226 Reissued Reports

1.226.010 Consenting to the Use of a Previously Issued Report

.01 A *member* or *member's firm* who was in compliance with the "Independence Rule" [1.200.001] when initially issuing a report may reissue the previously issued report or consent to, or acknowledge the inclusion or incorporation by reference of, the report when the *member* or *member's firm's independence* is *impaired*, provided that the *member* or *member's firm* does not perform procedures that require updating the date or dual dating the report.

.02 In order to consent to, or acknowledge the inclusion or incorporation by reference of, a previously issued report, the *member* or *member's firm* may perform procedures required

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by applicable professional standards when the *member's* or *member's firm's independence* is *impaired*. Such procedures include making inquiries of successor auditors, reading the subsequent *financial statements*, or other procedures that the *member* believes are necessary to assess the effect of subsequently discovered facts on the *financial statements* covered by the previously issued report. [Prior reference: paragraphs .200–.201 of ET section 191]

1.228 Engagement Contractual Terms

1.228.010 Indemnification of a Covered Member

.01 *Threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* and a *covered member's independence* would not be *impaired* if the *covered member* includes in engagement letters a clause that provides that its *attest client* would release, indemnify, defend, and hold the *covered member* (and the *covered member's partners*, heirs, executors, personal representatives, successors, and assigns) harmless from any liability and costs resulting from knowing misrepresentations by management. [Prior reference: paragraphs .188–.189 of ET section 191]

.02 Refer to the "Indemnification and Limitation of Liability Provisions" interpretation [1.400.060] of the "Acts Discreditable Rule" [1.400.001].

1.228.020 Indemnification of an Attest Client

.01 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if the *covered member* enters into an agreement providing, among other things, that the *covered member* indemnifies the *attest client* for damages, losses, or costs arising from lawsuits, claims, or settlements that relate, directly or indirectly, to the *attest client's* acts. The *covered member's independence* would be *impaired* under these circumstances. [Prior reference: paragraphs .204–.205 of ET section 191]

1.228.030 Alternative Dispute Resolution

.01 A *covered member* may include in an engagement letter a provision to use alternative dispute resolution (ADR) techniques to resolve disputes relating to past services (in lieu of litigation). *Threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* and *independence* would not be *impaired* because the *covered member* and *attest client* would not be in positions of material adverse interests due to threatened or actual litigation.

.02 The *covered member* should exercise professional judgment when rendering current services, regardless of the existence of the provision. [Prior reference: paragraphs .190–.191 of ET section 191]

.03 If ADR techniques are initiated to resolve a dispute with the *attest client*, *threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* when the ADR techniques are designed to facilitate negotiation, and the conduct of those

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negotiations does not place the *covered member* and the *attest client* in positions of material adverse interests. *Independence* would not be *impaired* under these circumstances. If, however, the ADR proceedings are sufficiently similar to litigation (as in the case of binding arbitration), an adverse interest *threat* may exist and place the *covered member* and the *attest client* in a position of material adverse interests. Under such circumstances, the *member* should apply the guidance under the "Actual or Threatened Litigation" interpretation [1.290.010] of the "Independence Rule." [Prior reference: paragraphs .192–.193 of ET section 191]

1.230 Fees

A nonauthoritative question and answer regarding *pro bono* and below cost fees is available. See Ethics Questions & Answers section 100.03Ethics Questions & Answers section 100.03, "Pro Bono and Below Cost Fees."

1.230.010 Unpaid Fees

.01 The existence of unpaid fees to a *covered member* for *professional services* previously rendered to an *attest client* may create self-interest or undue influence *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001]. Unpaid fees include fees that are unbilled or a note receivable arising from such fees.

.02 Factors to consider when evaluating whether *threats* are at an *acceptable level* include the following:

a. The significance of the unpaid fees to the *covered member*

b. The length of time the fees have been due from the *attest client*

c. The *attest client's* agreement to pay the unpaid fees

d. The *covered member's* assessment of factors affecting the ability of the *attest client* to pay the fees

.03 *Threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] are at an *acceptable level* if, when the current-year attest report is issued, unpaid fees are both clearly insignificant to the *covered member* and relate to *professional services* provided less than one year prior to the date of the current-year attest report. Alternatively, *threats* would not be at an *acceptable level* if, when the current-year attest report is issued, unpaid fees are both significant to the *covered member* and relate to *professional services* provided more than one year prior to the issue date of the current-year attest report. Other situations may require judgment to assess whether there are *threats* to the *covered member's* compliance with the "Independence Rule."

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.04 If the *covered member* concludes that *threats* are not at an *acceptable level*, then the *covered member* should apply *safeguards* to eliminate the *threats* or reduce them to an *acceptable level*. Application of more than one *safeguard* may be required to eliminate or reduce *threats* to an *acceptable level*. If *safeguards* are not available or cannot be applied to eliminate or reduce the *threats* to an *acceptable level*, then *independence* would be *impaired*. Examples of actions that might be *safeguards* include the following:

a. Have an appropriate reviewer who has not provided attest or nonattest services to the *attest client* review the attest work performed before the current-year attest report is issued.

b. Obtain partial payment of the unpaid fees balance before the current-year attest report is issued such that the remaining unpaid balance is insignificant to the *covered member*.

c. Obtain an agreement from the *attest client* to a payment schedule before the current-year attest report is issued.

d. Suspend further work on current attest engagements and not accept new engagements with this *attest client*.

.05 Communication with *those charged with governance* regarding evaluation of the unpaid fees and *safeguards* applied is not a sufficient *safeguard* when applied alone; however, it may be considered a *safeguard* when supplemented by other *safeguard(s)*, such as those noted in paragraph .04*a–d*.

.06 This interpretation does not apply to unpaid fees from an *attest client* in bankruptcy. [Prior reference: paragraphs .103–.104 of ET section 191]

.07 Refer to the "Fees and Other Types of Remuneration" topic [1.500] for additional guidance.

[See Revision History Table.]

Nonauthoritative guidance is available on the topic of unpaid fees. See Ethics Questions & Answers (Q&A) sections 125.01–.03Ethics Questions & Answers (Q&A) sections 125.01–.03 of Q&A section 125, *Fees*, and chapter 10chapter 10, "Fee Issues," of the *Plain English Guide to Independence*.

1.230.020 Fees and Other Types of Remuneration

.01 See the "Fees and Other Types of Remuneration" topic [1.500] for guidance on contingent fees, commissions, and referral fees. [No prior reference: new content]

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Effective Date

.02 Effective December 15, 2014.

1.230.030 Determining Fees for an Attest Engagement

.01 Determining the fees to be charged to an *attest client*, whether for attest or other services, is a business decision taking into account the facts and circumstances relevant to that specific engagement, including the requirements of technical and professional standards.

.02 The provision of other services to an *attest client* is not an appropriate consideration in determining the *attest engagement* fee, except as provided for in paragraph .03. If a *covered member* responsible for determining the *attest engagement* fee allows the *attest engagement* fee to be influenced by the firm's provision of other services to an *attest client*, the self-interest and undue influence *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.03 When determining the *attest engagement* fee, the *covered member* responsible for determining the *attest engagement* fee may take into consideration the cost savings achieved as a result of experience derived from the provision of other services to an *attest client*.

Effective Date

.04 This interpretation is effective January 1, 2025. Early implementation is allowed.

[See Revision History Table.]

1.230.040 Fee Dependency

.01 When the total fees generated in any year from an *attest client* by the *firm* represent a large proportion of the total fees of that *firm*, the dependence on and concern about the potential loss of fees from attest and other services from that *client* affect the level of the self-interest *threat* and create an undue influence *threat* to a *covered member's independence*.

.02 In calculating the total fees of the *firm*, the *covered member* should include fees from attest and nonattest services and might use financial information available from the previous financial year and estimate the proportion based on that information if appropriate. For purposes of this calculation, the *covered member* is not required to include fees from attest and nonattest services of other *network firms* within the *firm's network*.

.03 When the *attest client* is a *financial statement attest client*, the *covered member* should include fees from entities described under item *a* of the definition of *affiliate*.

.04 When, for each of five consecutive years, total fees from an *attest client* represent or are likely to represent a large proportion of the total fees received by the *firm*, *threats* to the

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covered member's compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and *independence* would be *impaired* unless one of the following *safeguards* is applied:

a. Prior to the attest report being issued for the fifth year, an appropriate reviewer who is not a member of the *firm* issuing the report reviews the fifth year's attest work.

b. After the attest report on the fifth year has been issued, and before the attest report is issued on the sixth year's *attest engagement*, an appropriate reviewer who is not a member of the *firm* issuing the report reviews the fifth year's attest work.

.05 If the total fees described in paragraph .04 continue to represent a large proportion, the *covered member* shall, each year, apply one of the *safeguards* in paragraph .04*a* or .04*b*.

.06 When two or more *firms* are engaged to conduct an *attest engagement*, the involvement of the other *firm* in the *attest engagement* may be regarded each year as an action equivalent to that in paragraph .04*a* if

a. the circumstances addressed by paragraph .04 apply to only one of the *firms* performing the *attest engagement* and

b. each *firm* performs sufficient work to take full individual responsibility for the report.

Effective Date

.07 This interpretation is effective January 1, 2025. Early implementation is allowed.

[See Revision History Table.]

1.240 Financial Interests

1.240.010 Overview of Financial Interests

.01 If a *covered member* had or was committed to acquire any *direct financial interest* in an *attest client* during the *period of the professional engagement*, the self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*. [Prior reference: paragraphs .02A(1) and .17 of ET section 101]

.02 If a *covered member* had or was committed to acquire any material *indirect financial interest* in an *attest client* during the *period of the professional engagement*, the self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*. [Prior reference: paragraphs .02A(1) and .17 of ET section 101]

.03 If a *partner* or professional employee of the *firm*, his or her *immediate family*, or any group of such persons acting together owned more than 5 percent of an *attest*

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client's outstanding equity securities or other ownership interests during the *period of the professional engagement*, the self-interest *threat* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*. [Prior reference: paragraph .02B of ET section 101]

.04 Refer to the "Joint Closely Held Investments" interpretation [1.265.020] for additional guidance.

1.240.020 Unsolicited Financial Interests

.01 When a *covered member* becomes aware that he or she will receive, or has received, an unsolicited *financial interest* in an *attest client* during the *period of the professional engagement*, such as through a gift or an inheritance, the self-interest *threat* would be at an *acceptable level* and *independence* would not be *impaired* if both of the following *safeguards* are met:

a. The *covered member* disposes of the *financial interest* as soon as practicable but no later than 30 days after the *covered member* has knowledge of and obtains the right to dispose of the *financial interest*.

b. The *covered member* does not participate on the *attest engagement team* during the period in which the *covered member* does not have the right to dispose of a material *direct financial interest* or material *indirect financial interest*. [Prior reference: paragraph .17 of ET section 101]

[See Revision History Table.]

1.240.030 Mutual Funds

.01 A *covered member* who owns shares in a mutual fund has a *direct financial interest* in the mutual fund. However, whether the underlying investments in the mutual fund are considered to be the *covered member's direct financial interests* or *indirect financial interests* depends on the proportion of the mutual fund's outstanding shares that the *covered member* owns and whether the mutual fund is diversified.

.02 If a *covered member* owns 5 percent or less of the outstanding shares of a diversified mutual fund, the underlying investments would be considered immaterial *indirect financial interests*. Accordingly, the self-interest *threat* would be at an *acceptable level*, and *independence* would not be *impaired*. To determine if the mutual fund is diversified, the *covered member* should consider referring to (*a*) the mutual fund's prospectus for disclosure regarding fund management's determination regarding diversification and (*b*) Section 5(b)(1) of the Investment Company Act of 1940.

.03 If a *covered member* owns more than 5 percent of a diversified mutual fund's outstanding shares, or if a *covered member* owns a *financial interest* in a nondiversified mutual fund, the *covered member* should evaluate the mutual fund's underlying investments to determine whether the *covered member* holds a material *indirect financial interest* in any of the underlying investments.

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.04 The following example illustrates how to determine if the underlying investments are material to a *covered member's* net worth. If

- a nondiversified mutual fund owns shares in client company A,
- the mutual fund's net assets are $10 million,
- the *covered member* owns 1 percent of the outstanding shares of the mutual fund, having a value of $100,000, and
- the mutual fund has 10 percent of its assets invested in company A,

then the *covered member's indirect financial interest* in company A is $10,000 ($100,000 × 10%). The *covered member* would then compare the $10,000 *indirect financial interest* with his or her net worth, including the net worth of his or her *immediate family*, to determine if the *indirect financial interest* in company A is material. [Prior reference: paragraph .17 of ET section 101]

1.240.040 Retirement, Savings, Compensation, or Similar Plans

.01 Depending upon the facts and circumstances, *financial interests* held in a retirement, savings, compensation, or similar plan are either *direct financial interests* or *indirect financial interests*.

.02 Investments held by a retirement, savings, compensation, or similar plan sponsored by a *firm* are *direct financial interests* of the *firm*.

.03 If a *covered member* or his or her *immediate family* self-directs the investments in a retirement, savings, compensation, or similar plan or has the ability to supervise or participate in the plan's investment decisions, the *financial interests* held by the plan are *direct financial interests* of the *covered member*. For example,

a. when a *covered member* or his or her *immediate family* member is a trustee of a retirement, savings, compensation, or similar plan or otherwise has the authority to supervise or participate in the plan's investment decisions (including through the selection of investment managers or pooled investment vehicles), the underlying investments are *direct financial interests* of the *covered member*.

b. for self-directed or participant-directed plans (that is, the *covered member* or his or her *immediate family* member selects the underlying plan investments or selects from investment alternatives offered by the plan), the underlying investments are *direct financial interests* of the *covered member*.

.04 When the *covered member* or his or her *immediate family* do not participate in a self-directed or participant-directed plan and have no authority to supervise or participate in the plan's investment decisions, the underlying investments would be considered to be *indirect financial interests* of the *covered member*.

.05 *Financial interests* held by a defined benefit plan are not considered *financial interests* of the *covered member* unless the *covered member* or his or her *immediate family* member

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is a trustee of the plan or otherwise has the ability to supervise or participate in the plan's investment decisions.

.06 Allocated shares held in an employee stock ownership plan (ESOP) are considered *beneficially owned* by the *covered member*. Until the *covered member* or his or her *immediate family* member has the right to dispose of the allocated shares of the ESOP, the beneficial ownership is considered an *indirect financial interest*. Once the participant has the right to dispose of the *financial interests*, the *financial interests* are *direct financial interests* of the *covered member*.

.07 Rights to acquire equity interests, restricted stock awards, or other *share-based compensation arrangements* are considered the *direct financial interests* of the *covered member*, regardless of whether such *financial interests* are vested or exercisable.

.08 See the "Plan Is an Attest Client or Is Sponsored by an Attest Client" interpretation [1.250.010] and the "Former Employment or Association With an Attest Client" interpretation [1.277.010] of the "Independence Rule" [1.200.001] and the interpretations of the "Family Relationships With Attest Clients" subtopic [1.270] under the "Independence Rule." [Prior reference: paragraph .17 of ET section 101]

1.240.050 Partnerships

.01 When used in this interpretation, control includes situations in which the *covered member* has the ability to exercise such control, either individually or acting together with his or her *firm* or other *partners* or professional employees of his or her *firm*.

.02 The ownership of a general or limited partnership interest is considered a *direct financial interest* in the partnership.

.03 *General partner*. If the *covered member* is a general partner, the *financial interests* held by a partnership are a *covered member's direct financial interests* because the *covered member* is in a position to control the partnership or supervise or participate in the partnership's investment decisions.

.04 *Limited partner.* If the *covered member* is a limited partner, the *financial interests* held by a limited partnership are a *covered member's indirect financial interests* as long as the *covered member* does not control the partnership or supervise or participate in the partnership's investment decisions. However, if the *covered member* has the ability to replace the general partner or has the authority to supervise or participate in the partnership's investment decisions, the partnership's *financial interests* would be the *covered member's direct financial interests* .

.05 Refer to the "Client Affiliates" interpretation [1.224.010] [1.200.001] and the "Joint Closely Held Investments" interpretation [1.265.020] of the "Independence Rule" for additional guidance. [Prior reference: paragraph .17 of ET section 101]

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1.240.060 Limited Liability Companies

.01 When used in this interpretation, control includes situations in which the *covered member* has the ability to exercise such control, either individually or acting together with his or her *firm* or other *partners* or professional employees of his or her *firm*.

.02 Ownership of an interest in a limited liability company (LLC) is a *direct financial interest* in the LLC.

.03 In an LLC, managing members control the LLC and have the authority to supervise or participate in the LLC's investment decisions. Accordingly, if a *covered member* is a manager of the LLC, the *financial interests* of the LLC are the *covered member's direct financial interests*. When a *covered member* is not a managing member of the LLC, the *covered member* should review the LLC's operating agreement to determine whether he or she can control the LLC or has the authority to supervise or participate in the LLC's investment decisions. In situations in which the *covered member* does not control the LLC and does not have the authority to supervise or participate in the LLC's investment decisions, the *financial interests* held by the LLC are the *covered member's indirect financial interests*. [Prior reference: paragraph .17 of ET section 101]

1.240.070 Section 529 Plans

.01 Section 529 plans are sponsored by states or higher education institutions and may be prepaid tuition plans or savings plans. An account owner may establish an account under either type of plan for the benefit of a single beneficiary. The account owner may designate himself or herself as the beneficiary and may change the beneficiary at any time to another individual who is a relative of the previous beneficiary.

Prepaid tuition plan

.02 The account owner of a Section 529 prepaid tuition plan is considered to have a *direct financial interest* in the plan. Accordingly, if the plan is an *attest client*, *independence* would be *impaired* if a *covered member* is an account owner.

.03 The account owner does not have any *financial interests* in the plan's underlying investments because the credits purchased represent an obligation of the state or educational institution to provide the education regardless of the plan's investment performance or the cost of the education at the future date.

Savings plan

.04 The account owner of a Section 529 savings plan is considered to have a *direct financial interest* in the plan. Accordingly, if the plan is an *attest client*, *independence* would be *impaired* if a *covered member* is an account owner.

.05 The account owner has an *indirect financial interest* in the plan's underlying investments because the account owner's interest in the plan is evidenced by a unit of participation in the plan, which is a municipal fund security, and not shares of the underlying investments. The account owner does not have the ability to control or influence

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the underlying investments comprising the plan's investment options. When the underlying investments in an account owner's Section 529 savings plan do not include an attest client, there are no threats to independence.

.06 When an underlying investment in an account owner's Section 529 savings plan is an *attest client*, *threats* to *independence* may exist if the account owner is a *covered member* with respect to the underlying investment.

.07 If the underlying investment in the *attest client* is material to the *covered member*, the self-interest *threat* would not be at an *acceptable level* and *independence* would be *impaired* unless the *covered member* applies one of the following *safeguards*:

a. Reallocates plan holdings such that there is no material *indirect financial interest* in an *attest client* for which the *member* is a *covered member*.

b. Transfers the account to another sponsor's Section 529 savings plan that does not include a material *indirect financial interest* in an *attest client* for which the *member* is a *covered member*.

c. Transfers the account to another account owner who is not subject to the "Independence Rule" [1.200.001].

The *safeguard* should be applied as soon as practicable but no later than 30 days after the *covered member* has knowledge of the material *indirect financial interest* in the *attest client* and the right to transfer without a penalty or tax that is significant to the account. If the *covered member* will incur a penalty or tax that is significant to the account, the *covered member* may maintain the position in the plan until the *safeguard* can be applied without significant penalty or tax, provided that the *covered member* does not participate on the *attest engagement team* and is not an *individual in a position to influence the attest engagement*.

.08 The *covered member* must expend best efforts to obtain the information necessary to identify the underlying investments and the amounts attributable to *attest clients* in order to determine if the underlying investments are material to the *covered member* as described in paragraph .07. If, after expending best efforts, the *covered member* is unable to obtain the information, then the "Conceptual Framework for Independence" interpretation [1.210.010] should be applied to evaluate whether the *threats* are at an *acceptable level*.

Beneficiary of Section 529 account

.09 A *covered member* who is a beneficiary of a Section 529 account is not considered to have a *financial interest* in the plan or the plan's underlying investments because the *covered member* does not own the account or possess any of the underlying benefits of ownership. The beneficiary's only interest is to receive distributions from the account for qualified higher education expenses if and when authorized by the account owner.

Government or governmental entity sponsors Section 529 plan

.10 Before becoming engaged to perform an *attest engagement* for a government or governmental entity that sponsors a Section 529 plan, *covered members* who are account

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owners of a Section 529 plan should consider the guidance in the "State and Local Government Client Affiliates" interpretation [1.224.020]. [Prior reference: paragraph .17 of ET section 101]

[See Revision History Table.]

1.245 Trusts and Estates

1.245.010 Trustee or Executor

.01 The designation of a *covered member* to serve as a trustee of a trust or an executor or administrator of an estate that held, or was committed to acquire, any *direct financial interest* or any material *indirect financial interest* in an *attest client* during the *period of the professional engagement* does not in itself create a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001]. [Prior reference: paragraphs .021–.022 of ET section 191]

.02 However, when the *covered member* serves as the trustee or executor during the *period of the professional engagement*, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if

a. the *covered member* (individually or with others) has the authority to make investment decisions for the trust or estate,

b. the trust or estate owned or was committed to acquire more than 10 percent of the *attest client's* outstanding equity securities or other ownership interests, or

c. the value of the trust's or estate's holdings in the *attest client* exceeds 10 percent of the total assets of the trust or estate.

Accordingly, in these situations, *independence* would be *impaired*. [Prior reference: paragraph .02A(2) of ET section 101]

1.245.020 Trust Investments

.01 When used in this interpretation, control includes situations in which the *covered member* has the ability to exercise such control, either individually or acting together with his or her *firm* or other *partners* or professional employees of his or her *firm*.

.02 When a *covered member* is a grantor of a trust, including a blind trust, the trust and its underlying investments are considered to be the *covered member's direct financial interest* if any of the following rights or responsibilities exist:

a. The *covered member* has the ability to amend or revoke the trust.

b. The *covered member* has authority to control the trust.

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c. The *covered member* has ability to supervise or participate in the trust's investment decisions.

d. The underlying trust investments will ultimately revert to the *covered member* as the grantor of the trust.

However, the trust and the trust's underlying investments are not considered to be *financial interests* of a *covered member* if the *covered member* is the grantor of the trust and the *covered member* does not have any of the rights or responsibilities in items *a–d*.

.03 When a *covered member* is only a beneficiary of a trust and does not have any of the rights or responsibilities noted in paragraph .02, the trust is considered to be the *direct financial interest* of the *covered member*, and the trust's underlying investments are considered to be *indirect financial interests* of the *covered member*. [Prior reference: paragraph .17 of ET section 101]

Effective Date

.04 This revised interpretation is effective December 15, 2014.

A nonauthoritative question and answer regarding the use of blind trusts is available. See Ethics Questions & Answers section 130.01Ethics Questions & Answers section 130.01, "Blind Trust."

1.250 Participation in Employee Benefit Plans

1.250.010 Plan Is an Attest Client or Is Sponsored by an Attest Client

.01 When a *covered member* participates in an employee benefit plan that is an *attest client* or is sponsored by an *attest client*, during the *period of the professional engagement* or during the period covered by the *financial statements*, the self-interest *threat* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*. *Independence* with respect to the employee benefit plan and the sponsor would be *impaired* except in the following specific situations:

a. *Governmental organization.* When a *covered member* is an employee of a governmental organization that sponsors, cosponsors, or participates with other governmental organizations in a public employee retirement plan (the plan) and the *covered member* is required by law, rule, or regulation to audit the plan, *threats* to *independence* would be at an *acceptable level* if all of the following *safeguards* are met:

   i. The *covered member* is required to participate in the plan as a condition of employment.

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ii. The plan is offered to all employees in comparable employment positions.

iii. The *covered member* is not associated with the plan in any capacity prohibited by the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] of the "Independence Rule."

iv. The *covered member* has no influence or control over the investment strategy, benefits, or other management activities associated with the plan.

b. *Former employment or association with the attest client.* The requirements of paragraph .04 of the "Former Employment or Association With an Attest Client" interpretation [1.277.010] must be met. [Prior reference: paragraphs .214–.215 of ET section 191]

.02 When an *immediate family* member participates as a result of his or her employment, in an employee benefit plan that is an *attest client* or is sponsored by an *attest client*, the requirements of the "Immediate Family Member Participation in an Employee Benefit Plan That Is an Attest Client or Is Sponsored by an Attest Client (Other Than Certain Share-Based Arrangements or Nonqualified Deferred Compensation Plans)" interpretation [1.270.030] of the "Independence Rule" [1.200.001] must be met. [Prior reference: paragraph .17 of ET section 101]

1.250.020 Former Partners and Professional Employees Participation in a Firm-Sponsored Plan

.01 When *partners* and professional employees leave a *firm* and are subsequently employed by, or associated with, an *attest client* of the *firm* in a *key position*, the requirements of paragraph .02*a–c* of the "Subsequent Employment or Association With an Attest Client" interpretation [1.279.020] must be met to reduce the familiarity, self-interest, or management participation *threats* to an *acceptable level*. [Prior reference: paragraph .04 of ET section 101]

1.255 Depository, Brokerage, and Other Accounts

1.255.010 Depository Accounts

.01 If a *covered member* maintains checking, savings, certificates of deposit, money market, or other depository accounts (depository accounts) at a bank or similar depository institution that is an *attest client* during the *period of the professional engagement*, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. For specific guidance applicable to any other types of custodial accounts (for example, brokerage accounts), see the "Brokerage and Other Accounts" interpretation [1.255.020] of the "Independence Rule."

.02 When the *covered member* is a *firm*, the *threat* would be at an *acceptable level*, and *independence* would not be *impaired* if the *firm* concludes that the likelihood is remote that the bank or similar depository institution will experience financial difficulties.

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.03 When the *covered member* is an individual, the *threat* would be at an *acceptable level*, and *independence* would not be *impaired* if

a. the balance in the depository account(s) is fully insured by the appropriate state or federal government deposit insurance agencies or by any other insurer, or

b. any uninsured amounts, in the aggregate, were not material to the *covered member's* net worth, or

c. if uninsured amounts were considered material, any uninsured amounts, in the aggregate, are reduced to an immaterial amount no later than 30 days from the date that the uninsured amount becomes material to the covered member's net worth.

.04 Refer to the "Member of a Credit Union" interpretation [1.280.040] of the "Independence Rule" [1.200.001] for additional guidance. [Prior reference: paragraphs .140–.141 of ET section 191]

1.255.020 Brokerage and Other Accounts

.01 If an *attest client* in the financial services industry, such as an insurance company, an investment adviser, a broker-dealer, a bank, or similar depository institution, has custody of a *covered member's* assets other than depository accounts, including retirement plan assets, during the *period of the professional engagement*, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. For specific guidance applicable to depository accounts held at a bank or similar depository institution, see the "Depository Accounts" interpretation [1.255.010] of the "Independence Rule."

.02 *Threats* would not be at an *acceptable level* and *independence* would be *impaired* unless the following *safeguards* are met

a. The *attest client's* services were rendered under the *attest client's* normal terms, procedures, and requirements.

b. Any *covered member's* assets subject to the risk of loss are immaterial to the *covered member's* net worth.

.03 In determining if there is a risk of loss, the *covered member* should consider losses arising from the *attest client's* insolvency, bankruptcy, or acts of fraud or other illegal acts but should not consider potential losses arising from a market decline in the value of the assets.

.04 When considering the materiality of assets subject to the risk of loss, the *covered member* should consider the following:

a. Protection that state or federal regulators provide for the assets, such as state insurance funds

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b. Private insurance or other forms of protection that the financial services company obtains to protect its customers' assets, such as coverage by the Securities Investor Protection Corporation

c. Protection from creditors, such as assets held in a pooled separate account or separate escrow accounts [Prior reference: paragraphs .081–.082 of ET section 191]

1.257 Insurance Products

1.257.010 Insurance Policies With No Investment Option

.01 An insurance policy obtained from a stock or mutual insurance company that does not offer the policy holder an investment option is not considered a *financial interest*.

.02 If during the *period of the professional engagement*, a *covered member* owns an insurance policy with no investment option issued by an *attest client*, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* would not be at an *acceptable level*, and could not be reduced to an *acceptable level* through the application of *safeguards*, if the *covered member* purchased the policy not under the normal terms, procedures, and requirements. Accordingly, *independence* would be *impaired*. [Prior reference: paragraph .17 of ET section 101]

1.257.020 Insurance Policies With Investment Options

.01 If during the *period of the professional engagement* the *covered member* owns an insurance policy with investment options issued by an *attest client*, but the *covered member* did not purchase the policy under the insurance company's normal terms, procedures, and requirements, *threats* would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.02 When a *covered member* purchases an insurance policy, under the insurance company's normal terms, procedures, and requirements, which offers an investment option that allows the *covered member* to invest part of the policy's cash value in various investment products, the policy's underlying investments are considered to be *financial interests* of the *covered member*. Accordingly, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.03 If the *covered member* has the ability to select the policy's underlying investments or the authority to supervise or participate in the investment decisions and the *covered member* invests in an *attest client* during the *period of the professional engagement*, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired* because the investment would be considered a *direct financial interest*. For example, if the *covered member* invested the policy's cash value into a mutual fund that is an *attest client*, the investment in the mutual fund would be considered a *direct financial interest* and *independence* would be *impaired*. However, the mutual fund's underlying investments are considered to be *indirect financial interests*.

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.04 Refer to the "Financial Interests" subtopic [1.240] and the "Joint Closely Held Investments" interpretation [1.265.020] of the "Independence Rule" [1.200.001] for additional guidance. [Prior reference: paragraph .17 of ET section 101]

1.257.030 Insurer Undergoes Demutualization

.01 If a mutual insurance company begins demutualization, a *covered member* who holds an insurance policy from the insurer should apply the guidance in the "Unsolicited Financial Interests" interpretation [1.240.020] of the "Independence Rule" [1.200.001]. [Prior reference: paragraph .17 of ET section 101]

1.260 Loans, Leases, and Guarantees

1.260.010 Loans

.01 If a *covered member* has a *loan* to or from an *attest client*, any officer or director of the *attest client* with the ability to affect decision-making, or any individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *attest client*, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* would not be at an *acceptable level* and *independence* would be *impaired* if the *loan* exists during the *period of the professional engagement*, except as provided for in the

a. "Loans and Leases With Lending Institutions" interpretation [1.260.020] of the "Independence Rule."

b. "Client Affiliates" interpretation [1.224.010] of the "Independence Rule."

[See Revision History Table.]

1.260.020 Loans and Leases With Lending Institutions

.01 The "Loans" interpretation [1.260.010] of the "Independence Rule" [1.200.001] provides that a self-interest *threat* would not be at an *acceptable level* and *independence* would be *impaired* if a *covered member* had a *loan* to or from an *attest client*, any officer or director of the *attest client* with the ability to affect decision-making, or any individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *attest client*, except as provided for in this interpretation.

Home Mortgages, Other Secured Loans, Immaterial Unsecured Loans, and Student Loans

.02 The *loans* covered by paragraph .03 include home mortgages, other secured *loans*, unsecured *loans* that are not material to the *covered member's* net worth (that is, immaterial unsecured *loans*), and student *loans*.

.03 *Threats* would be at an *acceptable level* and *independence* would not be *impaired* if a *covered member* or his or her *immediate family* has any of the *loans* identified in paragraph .02 from a *lending institution attest client*, if all the following *safeguards* are met:

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a. The *loans* were obtained under the *lending institution's normal lending procedures, terms, and requirements*.

b. The *loans* were obtained in one of the following ways (in determining when the *loans* were obtained, the date a commitment or line of credit is granted must be used, rather than the date a transaction closes or funds are obtained):

   i. From the *lending institution* prior to it becoming an *attest client*

   ii. From a *lending institution* for which *independence* was not required and that was later sold to an *attest client*

   iii. From a *lending institution attest client* by a borrower prior to the *member* becoming a *covered member* with respect to that *attest client*

   iv. Prior to May 31, 2002, and the requirements of the loan transition provision in www.aicpa-cima.com/resources/download/transition-provisions are met

c. After an individual becomes a *covered member*, any *loans* must be kept current regarding all terms, at all times, and the terms may not change in any manner not provided for in the original agreement. Examples of changed terms are a new or extended maturity date, a new interest rate or formula, revised collateral, and revised or waived covenants.

d. The estimated fair value of the collateral for home mortgages or other secured *loans* should equal or exceed the outstanding balance during the term of the home mortgages or other secured *loans*. If the estimated fair value of the collateral is less than the outstanding balance of the home mortgages or other secured *loans*, the portion that exceeds the estimated fair value of the collateral may not be material to the *covered member's* net worth.

Loans to Partnerships and Other Similar Entities

.04 For purposes of applying the loan provision in paragraph .03 when the *covered member* is a partner in a partnership, a *loan* to a limited partnership (or similar type of entity) or general partnership would be ascribed to each *covered member* who is a partner in the partnership on the basis of his or her legal liability as a limited or general partner if

a. the *covered member's* interest in the limited partnership, either individually or combined with the interest of one or more *covered members*, exceeds 50 percent of the total limited partnership interest, or

b. the *covered member*, either individually or together with one or more *covered members*, can *control* the general partnership.

Even if no amount of a partnership *loan* is ascribed to the *covered member(s)* previously identified, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards* if the partnership renegotiates a loan or obtains a new *loan* that is not a permitted *loan*, as described in paragraph .05 of this interpretation. Accordingly, *independence* would be *impaired*.

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Other Loans and Leases

.05 *Threats* would be at an *acceptable level* and *independence* would not be *impaired* if a *covered member* obtains one of the following types of *loans* or leases under the *lending institution's normal lending procedures, terms, and requirements*, provided the *covered member* complies with the terms of the loan or lease agreement at all times (for example, keeping payments current):

a. Automobile *loans* and leases collateralized by the automobile

b. *Loans* fully collateralized by the cash surrender value of an insurance policy

c. *Loans* fully collateralized by cash deposits at the same *lending institution* (for example, passbook *loans*)

.06 *Threats* would be at an *acceptable level* and *independence* would not be *impaired* if a *covered member* has consumer *loans* (for example, credit cards, retail installment *loans*, and home improvement *loans*) and overdraft reserve accounts from the same *lending institution* that have an aggregate outstanding balance of $10,000 or less on a current basis, taking into consideration the payment due date and any available grace period.

Other Matters

.07 *Members* should consider that certain state and federal agencies may proscribe more restrictive requirements over *lending institutions* that are subject to their oversight and that, in turn, impose more restrictive requirements upon *members* that perform *attest engagements* for these *lending institutions*. For example, the SEC proscribes more restrictive requirements over *members* providing attest services to *lending institutions* and broker-dealers within their purview. [Prior reference: paragraph .07 of ET section 101 and paragraphs .150–.151 of ET section 191]

.08 *Covered members* may be subject to additional restrictions, as described in the "Depository Accounts" interpretation [1.255.010], the "Member of a Credit Union" interpretation [1.280.040], and the "Leases" interpretation [1.260.040] of the "Independence Rule" [1.200.001].

[See Revision History Table.]

1.260.030 Servicing of a Loan

.01 The self-interest *threat* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* and *independence* would not be *impaired* if a *lending institution attest client* services a *loan* originally extended to a *covered member* by another *lending institution*. [Prior reference: paragraphs .134–.135 of ET section 191]

1.260.040 Leases

.01 When a *covered member* enters into or has a lease with an *attest client*, self-interest, familiarity, and undue influence *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

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New or Renegotiated Leases

.02 If a *covered member* who is an individual on the *attest engagement team*, an individual in a position to influence the *attest engagement*, or the *firm* enters into a lease or renegotiates terms of an existing lease with an *attest client* during the *period of the professional engagement*, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. *Independence* would be *impaired*, unless all of the following *safeguards* are met at the time of entering into or renegotiating the lease:

a. The lease is on market terms and established at arm's length.

b. The lease is not material to any of the parties to the lease. When evaluating materiality, all leases between the *covered member* and the *attest client* should be considered in the aggregate.

.03 Once the *covered member* enters into or renegotiates the lease, *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would not be at an acceptable level and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired* if the lease amounts are not paid in accordance with the lease terms or provisions by the due date or within any available grace periods during the *period of the professional engagement*.

Existing Leases

.04 Under the circumstances in paragraph .05, the *covered member* should evaluate the significance of any *threats* to determine whether the *threats* are at an *acceptable level*. If the *covered member* determines that *threats* are not at an *acceptable level*, the *covered member* should apply *safeguards* to eliminate or reduce the *threats* to an acceptable level. If no *safeguards* are available to eliminate or reduce *threats* to an *acceptable level*, *independence* would be *impaired*.

.05 A *covered member* who is an individual on the *attest engagement team*, an *individual in a position to influence the attest engagement*, or the *firm* has a lease with an *attest client* that was

a. entered into or renegotiated prior to the
    i. *period of the professional engagement*,
    ii. *member* becoming a *covered member*, or
    iii. counterparty becoming an *attest client* or an *affiliate* of a *financial statement attest client*, or

b. entered into or renegotiated during the *period of the professional engagement*, in compliance with paragraph .02, but, due to a change in circumstances after the lease is entered into or renegotiated, the lease becomes material to any party to the lease during the *period of the professional engagement*.

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.06 The significance of the *threats* will depend on factors such as the following:

a. The role of the *covered member* on the *attest engagement* or with the *firm*

b. The materiality of the lease to the *covered member* or the *attest client* during the *period of the professional engagement*

c. Whether multiple leases exist with the *attest client* and, if so, the aggregate materiality of those leases to the *covered member* or the *attest client*

d. The extent to which the lease will be subject to attest procedures or financial statement disclosures

e. The duration of the lease term

f. Whether the lease is on market terms or established at arm's length

.07 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if the lease amounts are not paid in accordance with the lease terms or provisions by the due date or within any available grace periods during the *period of the professional engagement*.

Applicability

.08 This interpretation excludes leases addressed by paragraph .04 of the "Loans and Leases With Lending Institutions" interpretation [1.260.020] under the "Independence Rule" [1.200.001].

.09 Refer to the "Client Affiliates" interpretation [1.224.010] under the "Independence Rule" [1.200.001] for additional guidance on leases held with certain affiliates of a *financial statement attest client*. [Prior reference: paragraph .17 of ET section 101]

.10 This interpretation is effective for fiscal years beginning after December 15, 2020, with early implementation allowed.

[See Revision History Table.]

1.260.050 Association With an Entity That Has a Loan To or From an Attest Client

.01 If a *covered member* is an officer, a director, or a shareholder of an entity and the entity has a *loan* to or from an *attest client* during the *period of the professional engagement*, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* to compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if the *covered member* has *control* over the entity. Accordingly, *independence* would be *impaired* because the lease would be considered to be a *loan* with an *attest client*. This paragraph excludes a lending relationship that is permitted under the "Loans and Leases With Lending Institutions" interpretation [1.260.020] of the "Independence Rule."

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.02 If any *partner* or professional employee of the *firm* is an officer, a director, or a shareholder of an entity and the entity has a *loan* to or from an *attest client*, *threats* to the *partner's* or professional employee's objectivity may exist. If the *partner* or professional employee is able to exercise *significant influence* over the entity but is not a *covered member* who can *control* the entity (see paragraph .01), the *partner* or professional employee should consider the "Conflicts of Interest" interpretation [1.110.010] of the "Integrity and Objectivity Rule" [1.100.001].

.03 When making the decision about whether to perform a *professional service* and in making disclosure to the appropriate parties, the *member* should consider the "Confidential Client Information Rule" [1.700.001]. [Prior reference: paragraphs .220–.221 of ET section 191]

1.265 Business Relationships

1.265.010 Cooperative Arrangements With Attest Clients

.01 If a *member* or his or her *firm* has a cooperative arrangement with an *attest client*, self-interest, familiarity, and undue influence *threats* to the *member* or his or her *firm's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* to compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if, during the *period of the professional engagement*, the cooperative arrangement is material to the *firm* or *attest client*. Accordingly, *independence* would be *impaired*.

.02 A cooperative arrangement exists when a *member* or the *member's firm* and an *attest client* jointly participate in a business activity. However, a cooperative arrangement would not exist when all of the following *safeguards* are met:

a. The participation of the *firm* and *attest client* are governed by separate agreements, arrangements, or understandings that do not create rights or obligations between the *firm* and *attest client*.

b. Neither the *firm* nor the *attest client* assumes responsibility for the other's activities or results.

c. Neither party has the authority to act as the other's representative or agent.

.03 Examples of cooperative arrangements include the following:

a. Prime and subcontractor arrangements to provide services or products to a third party

b. Joint ventures to develop or market products or services

c. Arrangements to combine one or more of the *firm's* services or products with one or more of the *attest client's* services or products and market the package with references to both parties

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d. Arrangements under which the *firm* acts as a distributor or marketer of the *attest client's* products or services or the *attest client* acts as the distributor or marketer of the *firm's* products or services

.04 Refer to the "Contingent Fees Rule" [1.510.001] and the "Commissions and Referral Fees Rule" [1.520.001] for additional guidance. [Prior reference: paragraph .14 of ET section 101]

1.265.020 Joint Closely Held Investments

.01 If a *covered member* has a *joint closely held investment*, a self-interest *threat* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* to compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if the *covered member* holds a material *joint closely held investment* during the *period of the professional engagement*. Accordingly, *independence* would be *impaired*. [Prior reference: paragraph .02A(3) of ET section 101]

.02 A *joint closely held investment* includes a joint interest in a vacation home shared by a *covered member* and an *attest client* (or one of the client's officers or directors, or any owner who has the ability to exercise *significant influence* over the *attest client*), if the *covered member* and *attest client* (or one of the client's officers or directors or any owner who has the ability to exercise *significant influence* over the *attest client*) *control* the investment and the vacation home is material to the *covered member*. Such is the case even if the vacation home is solely intended for the personal use of the owners. [Prior reference: paragraphs .184–.185 of ET section 191]

1.270 Family Relationships With Attest Clients

1.270.010 Immediate Family Members

.01 The *immediate family* of a *covered member* must comply with the "Independence Rule" [1.200.001] and its *interpretations*, except as permitted in the following interpretations:

a. "Immediate Family Member Is Employed by the Attest Client" [1.270.020]

b. "Immediate Family Member Participation in an Employee Benefit Plan That Is an Attest Client or Is Sponsored by an Attest Client (Other Than Certain Share-Based Arrangements or Nonqualified Deferred Compensation Plans)" [1.270.030]

c. "Immediate Family Member Participation in an Employee Benefit Plan With Financial Interests in an Attest Client" [1.270.040]

d. "Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Beneficially Owned Financial Interests in Attest Clients" [1.270.050]

e. "Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Rights to Acquire Shares in an Attest Client" [1.270.060]

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f. "Immediate Family Member Participation in Share-Based Compensation Arrangements Based Upon Stock Appreciation" [1.270.070]

g. "Immediate Family Member Participation in a Nonqualified Deferred Compensation Plan" [1.270.080]

.02 Notwithstanding any exceptions provided for in paragraph .01, the ownership interests of a *covered member's immediate family* may not exceed those specified in paragraph .03 of the "Overview of Financial Interests" interpretation [1.240.010] of the "Independence Rule" [1.200.001].

.03 When materiality of a *financial interest*or a *loan* is identified as a factor affecting *independence* in the *interpretations* of the "Independence Rule" [1.200.001], interests of the *immediate family* member and the *covered member* should be combined to determine materiality to the *covered member*. [Prior reference: paragraph .02 of ET section 101]

[See Revision History Table.]

A nonauthoritative white paper is available that provides some discussion on changes made to the independence provisions that are applicable to close relatives. See "White Paper — Independence Rules Modernization ProjectWhite Paper — Independence Rules Modernization Project" in *Basis for Conclusions Documents*.

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

1.270.020 Immediate Family Member Is Employed by the Attest Client

.01 When an individual in a *covered member's immediate family* is employed by an *attest client*, management participation, familiarity, and self-interest *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If a *covered member's immediate family* is employed by an *attest client* but is not in a *key position*, *threats* would be at an *acceptable level* and *independence* would not be *impaired*.

.03 If a *covered member's immediate family* is in a *key position* with an *attest client* during the period covered by the *financial statements* or during the *period of the professional engagement*, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* . Accordingly, *independence* would be *impaired*.

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Grandfathered Employment Relationships

.04 For information about grandfathered employment relationships for *immediate family* members, refer to www.aicpa-cima.com/resources/download/transition-provisions. [Prior reference: paragraph .02 of ET section 101]

A nonauthoritative white paper is available that provides some discussion on changes made to the independence provisions that are applicable to close relatives. See "White Paper — Independence Rules Modernization ProjectWhite Paper — Independence Rules Modernization Project" in *Basis for Conclusions Documents*.

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

1.270.030 Immediate Family Member Participation in an Employee Benefit Plan That Is an Attest Client or Is Sponsored by an Attest Client (Other Than Certain Share-Based Arrangements or Nonqualified Deferred Compensation Plans)

.01 If during the period covered by the *financial statements* or during the *period of the professional engagement*, an *immediate family* member of a *covered member* participates in an employee benefit plan (plan) that is an *attest client* or is sponsored by an *attest client* (other than an *attest client's share-based compensation arrangement* and nonqualified deferred compensation plan), *threats* would be at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* were met:

a. The *immediate family* member does not serve in a *key position* for the *attest client*, as discussed in the "Immediate Family Member Is Employed by the Attest Client" interpretation [1.270.020] of the "Independence Rule" [1.200.001].

b. The plan is offered to all employees in comparable employment positions.

c. The *immediate family* member does not serve in a position of governance (for example, board of trustees) for the plan.

d. The *immediate family* member does not have the ability to supervise or participate in the plan's investment decisions or in the selection of the investment options made available to plan participants. [Prior reference: paragraph .02 of ET section 101]

.02 *Share-based compensation arrangements* and nonqualified deferred compensation plans are discussed in the following interpretations:

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a. "Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Beneficially Owned Financial Interests in Attest Clients" interpretation [1.270.050] of the "Independence Rule" [1.200.001]

b. "Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Rights to Acquire Shares in an Attest Client" interpretation [1.270.060] of the "Independence Rule"

c. "Immediate Family Member Participation in Share-Based Compensation Arrangements Based Upon Stock Appreciation" interpretation [1.270.070] of the "Independence Rule"

d. "Immediate Family Member Participation in a Nonqualified Deferred Compensation Plan" interpretation [1.270.080] of the "Independence Rule"

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

1.270.040 Immediate Family Member Participation in an Employee Benefit Plan With Financial Interests in an Attest Client

.01 If during the *period of the professional engagement*, an *immediate family* member of a *covered member* is employed at a nonclient or employed in a non-*key position* at an *attest client*, the *immediate family* member may hold a *direct financial interest* or material *indirect financial interest* in an *attest client* through participation in an employee benefit plan if *threats* are at an *acceptable level*. *Threats* would be at an *acceptable level*, and *independence* would not be *impaired*, if all of the following *safeguards* were met:

a. The *covered member* neither participates on the *attest engagement team* nor is an *individual in a position to influence the attest engagement*.

b. Such investment is an unavoidable consequence of such participation. Unavoidable consequence means that the *immediate family* member has no other investment options available for selection, including money market or invested cash options, except for selecting an investment option in an *attest client*.

c. In the event that a plan provides an option that permits the *immediate family* member to invest in a nonattest *client* or a nonclient investment option that becomes available, the *immediate family* member is required to select the investment option in the nonclient or nonattest *client* and dispose of *financial interests* in the *attest client* as soon as practicable but no later than 30 days after such option becomes available.

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When legal or other similar restrictions exist on an *immediate family* member's right to dispose of a *financial interest* at a particular time, the *immediate family* member need not dispose of the interest until the restrictions have lapsed. For example, an *immediate family* member is not required to dispose of a *financial interest* in an *attest client* if doing so would violate an employer's policies on insider trading. On the other hand, waiting for more advantageous market conditions to dispose of the interest would not fall within this exception. [Prior reference: paragraph .02 of ET section 101]

This paragraph excludes participation in *share-based compensation arrangements* and nonqualified deferred compensation arrangements (see paragraph .02).

.02 *Share-based compensation arrangements* and nonqualified deferred compensation plans are discussed in the following interpretations:

a. "Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Beneficially Owned Financial Interests in Attest Clients" interpretation [1.270.050] of the "Independence Rule" [1.200.001]

b. "Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Rights to Acquire Shares in an Attest Client" interpretation [1.270.060] of the "Independence Rule"

c. "Immediate Family Member Participation in Share-Based Compensation Arrangements Based Upon Stock Appreciation" interpretation [1.270.070] of the "Independence Rule"

d. "Immediate Family Member Participation in a Nonqualified Deferred Compensation Plan" interpretation [1.270.080] of the "Independence Rule"

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

1.270.050 Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Beneficially Owned Financial Interests in Attest Clients

.01 If during the *period of the professional engagement*, an *immediate family* member of a *covered member* participates in a *share-based compensation arrangement* of an *attest client*, such as an ESOP, that results in the *immediate family* member holding a *financial interest* in an *attest client* that is *beneficially owned*, *threats* are at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* were met:

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a. The *immediate family* member does not serve in a *key position* for the *attest client*, as discussed in the "Immediate Family Member Is Employed by the Attest Client" interpretation [1.270.020] of the "Independence Rule" [1.200.001].

b. The *covered member* neither participates on the *attest engagement team* nor is an *individual in a position to influence the attest engagement*.

c. The *immediate family* member does not serve as a trustee for the *share-based compensation arrangement* and does not have the ability to supervise or participate in the selection of any investment options made available to plan participants.

d. When the *financial interests* that are *beneficially owned* are distributed or the *immediate family* member has the right to dispose of the *financial interests*, the *immediate family* member is required to do one of the following:

    i. Dispose of the *financial interests* as soon as practicable but no later than 30 days after he or she has the right to dispose of the *financial interests*.

    ii. Exercise his or her put option to require the employer to repurchase the *financial interests* as soon as permitted by the terms of the *share-based compensation arrangement*. In addition, any repurchase obligation due to the *immediate family* member arising from exercise of the option that is outstanding for more than 30 days needs to be immaterial to the *covered member* during the payout period. When legal or other similar restrictions exist on an *immediate family* member's right to dispose of a *financial interest* at a particular time, the *immediate family* member need not dispose of the interest until the restrictions have lapsed. For example, an *immediate family* member does not have to dispose of a *financial interest* in an *attest client* if doing so would violate an employer's policies on insider trading. On the other hand, waiting for more advantageous market conditions to dispose of the interest does not qualify for this exception.

e. Benefits payable from the *share-based compensation arrangement* to the *immediate family* member upon termination of employment, whether through retirement, death, disability, or voluntary or involuntary termination, are funded by investment options other than the employer's *financial interests*, and any unfunded benefits payable are immaterial to the *covered member* at all times during the payout period. [Prior reference: paragraph .02 of ET section 101]

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

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1.270.060 Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Rights to Acquire Shares in an Attest Client

.01 If during the *period of the professional engagement* an *immediate family* member of a *covered member* participates in a *share-based compensation arrangement* resulting in a right to acquire shares in an *attest client*, such as an ESOP or restricted stock rights plan, *threats* are at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* were met:

a. The *immediate family* member does not serve in a *key position* for the *attest client*, as discussed in the "Immediate Family Member Is Employed by the Attest Client" interpretation [1.270.020] of the "Independence Rule" [1.200.001].

b. The *covered member* neither participates on the *attest engagement team* nor is an *individual in a position to influence the attest engagement*.

c. The *immediate family* member exercises or forfeits these rights once he or she is vested, and the closing market price of the underlying stock equals or exceeds the exercise price for 10 consecutive days (market period). The exercise or forfeiture should occur as soon as practicable but no later than 30 days after the end of the market period. In addition, if the *immediate family* member exercises his or her right to acquire shares in the *attest client*, he or she should dispose of the shares as soon as practicable but no later than 30 days after the exercise date. Also, note the following:

   i. When legal or other similar restrictions exist on an *immediate family* member's right to dispose of a *financial interest* at a particular time, the *immediate family* member need not dispose of the interest until the restrictions have lapsed. For example, an *immediate family* member does not have to dispose of a *financial interest* in an *attest client* if doing so would violate an employer's policies on insider trading. On the other hand, waiting for more advantageous market conditions to dispose of the interest would not qualify for this exception.

   ii. If the employer repurchases the shares, any employer repurchase obligation due to the *immediate family* member that is outstanding for more than 30 days needs to be immaterial to the *covered member* during the payout period.

.02 Refer to paragraph .06 of the "Retirement, Savings, Compensation, or Similar Plans" interpretation [1.240.040] of the "Independence Rule" [1.200.001] for additional guidance. [Prior reference: paragraph .02 of ET section 101]

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

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1.270.070 Immediate Family Member Participation in Share-Based Compensation Arrangements Based Upon Stock Appreciation

.01 If during the *period of the professional engagement* an *immediate family* member of a *covered member* participates in a *share-based compensation arrangement* based on the appreciation of an *attest client's* underlying shares, such as a stock appreciation plan or phantom stock plan, *threats* are at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* were met:

a. The *immediate family* member does not serve in a *key position* for the *attest client*, as discussed in the "Immediate Family Member Is Employed by the Attest Client" interpretation [1.270.020] of the "Independence Rule" [1.200.001].

b. The *share-based compensation arrangement* does not provide for the issuance of rights to acquire the employer's *financial interests*.

c. The *covered member* neither participates on the *attest engagement team* nor is an *individual in a position to influence the attest engagement*.

d. The *immediate family* member exercises or forfeits these rights once he or she is vested, if the underlying price of the employer's shares equals or exceeds the exercise price for 10 consecutive days (market period). Exercise or forfeiture should occur as soon as practicable but no later than 30 days after the end of the market period.

e. Any resulting compensation payable to the *immediate family* member that is outstanding for more than 30 days is immaterial to the *covered member* during the payout period. [Prior reference: paragraph .02 of ET section 101]

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

1.270.080 Immediate Family Member Participation in a Nonqualified Deferred Compensation Plan

.01 If during the *period of the professional engagement* an *immediate family* member of a *covered member* participates in a nonqualified deferred compensation plan of an *attest client* as a result of his or her employment, *threats* are at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* were met:

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a. The *immediate family* member does not serve in a *key position* for the *attest client*, as discussed in the "Immediate Family Member Is Employed by the Attest Client" interpretation [1.270.020] of the "Independence Rule" [1.200.001].

b. The *covered member* neither participates on the *attest engagement team* nor is an *individual in a position to influence the attest engagement*.

c. The amount of the deferred compensation payable to the *immediate family* member is funded through life insurance, an annuity, a trust, or similar vehicle, and any unfunded portion is immaterial to the *covered member*.

d. Any funding of the deferred compensation does not include *financial interests* in the *attest client*. [Prior reference: paragraph .02 of ET section 101]

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Immediate Family MemberBackground and Basis for Conclusions: Immediate Family Member" in *Basis for Conclusions Documents*.

1.270.100 Close Relatives

.01 When a *close relative* of a *covered member* is employed by an *attest client* or has *financial interests* in an *attest client*, management participation, familiarity, and self-interest *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if an individual participating on the *attest engagement team* has a *close relative* who has either of the following:

a. A *key position* with the *attest client* during the period covered by the *financial statements* or during the *period of the professional engagement*.

b. A *financial interest* in the *attest client* during the *period of the professional engagement* that

   i. the individual knows or has reason to believe was material to the *close relative* or

   ii. enabled the *close relative* to exercise *significant influence* over the *attest client*.

.03 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* and *independence* will be *impaired* if an *individual in a position to influence*

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the attest engagement or any *partner* or *partner equivalent* in the *office* in which the lead *attest engagement partner* or *partner equivalent* primarily practices in connection with the *attest engagement* has a *close relative* who has either of the following:

a. A *key position* with the *attest client* during the period covered by the *financial statements* or during the *period of the professional engagement*.

b. A *financial interest* in the *attest client* during the *period of the professional engagement* that

   i. the individual, *partner*, or *partner equivalent* knows or has reason to believe was material to the *close relative* and

   ii. enabled the *close relative* to exercise *significant influence* over the *attest client*.

Grandfathered Employment Relationships

.04 For information about grandfathered employment relationships for close relatives, refer to www.aicpa-cima.com/resources/download/transition-provisions. [Prior reference: paragraph .02 of ET section 101]

Effective Date

.05 The addition of partner equivalents to paragraph .03 is effective for engagements covering periods beginning on or after December 15, 2014.

A nonauthoritative white paper is available that provides some discussion on changes made to the independence provisions that are applicable to close relatives. See "White Paper — Independence Rules Modernization ProjectWhite Paper — Independence Rules Modernization Project" in *Basis for Conclusions Documents*.

1.275 Current Employment or Association With an Attest Client

1.275.005 Simultaneous Employment or Association With an Attest Client

.01 In this interpretation, simultaneous employment or association with an *attest client* is serving as a director, an officer, an employee, a promoter, an underwriter, a voting trustee, a trustee for any pension or profit-sharing trust of the *attest client*, or in any capacity equivalent to that of a member of management of an *attest client* during the period covered by the *financial statements* or the *period of the professional engagement*.

.02 If a *partner* or professional employee of the *member's firm* is simultaneously employed or associated with an *attest client*, familiarity, management participation, advocacy, or self-review *threats* to the *member's* compliance with the "Independence Rule" [1.200.001]

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would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*. [Prior reference: paragraph .02C of ET section 101]

.03 However, *threats* will be at an *acceptable level* and *independence* will not be *impaired* when either of the following situations exists:

a. A *partner* or professional employee of a *firm* serves as an adjunct faculty member of an educational institution that is an *attest client* of the *firm* and the *partner* or professional employee meets all of the following *safeguards*:

   i. Does not hold a *key position* at the educational institution

   ii. Does not participate on the *attest engagement team*

   iii. Is not an *individual in a position to influence the attest engagement*

   iv. Is employed by the educational institution on a part-time and non-tenure basis

   v. Does not participate in any employee benefit plans sponsored by the educational institution, unless participation is required

   vi. Does not assume any management responsibilities or set policies for the educational institution

   Upon termination of employment, the *partner* or professional employee should comply with the requirements of the "Former Employment or Association With an Attest Client" interpretation [1.277.010] of the "Independence Rule" [1.200.001]. [Prior reference: paragraph .21 of ET section 101]

b. A *member* in a government audit organization performs an *attest engagement* with respect to the government entity and the head of the government audit organization meets at least one of the following:

   i. Is directly elected by voters of the government entity with respect to which *attest engagements* are performed

   ii. Is appointed by a legislative body and is subject to removal by a legislative body

   iii. Is appointed by someone other than the legislative body, as long as the appointment is confirmed by the legislative body and removal is subject to oversight or approval by the legislative body

.04 *Members* that are simultaneously employed or associated with an *attest client* should consider their obligations as a *member in business* under part 2 of the code. [No prior reference: new content]

Effective Date

.05 Paragraph .04 of this interpretation is effective December 15, 2014.

[See Revision History Table.]

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A nonauthoritative question and answer regarding independent contractors retained by the firm who are simultaneously employed or associated with an attest client is available. See Ethics Questions & Answers section 100.02Ethics Questions & Answers section 100.02, “Independent Contractors.”

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September 2025

This interpretation replaces the former "Simultaneous Employment or Association With an Attest Client" interpretation in its entirety, effective September 15, 2026.

Simultaneous Employment or Association With an Attest Client

.01 Except as noted in paragraphs .10–.12, the familiarity, management participation, advocacy, self-interest, or self-review *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* and *independence* would be *impaired* when

a. a *covered member* is *simultaneously employed or associated* with the *attest client*; or

b. a *partner* or professional employee who is not a *covered member* is *simultaneously employed or associated* in a *key position* with the *attest client*.

.02 When a *partner* or professional employee intends to accept an offer to become *simultaneously employed or associated* with an *attest client*,

a. the person should promptly report the offer to an appropriate person in the *firm*; and

b. the appropriate person should apply the "Conceptual Framework for Independence" interpretation [1.210.010] to evaluate whether the familiarity, management participation, advocacy, self-interest, and self-review *threats* are at an *acceptable level*. When applying the conceptual framework, the appropriate person should consider the information in paragraphs .04–.07.

.03 An inadvertent and isolated failure to apply items (*a*)–(*b*) of paragraph .02 will not *impair independence* if the relevant parties perform the required procedures promptly upon discovery of such failure and meet all other provisions of this *interpretation*.

.04 An inadvertent and isolated failure to apply items (*a*)–(*b*) of paragraph .02 will not *impair independence* if the relevant parties perform the required procedures promptly upon discovery of such failure and meet all other provisions of this *interpretation*.

a. The individual's position and role at the *attest client*.For example, a role with high visibility or responsibility may increase the significance of *threats*.

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b. The individual's position and role at the *firm*. For example, an individual who is a member of the *firm's* management or otherwise in a highly visible position in the *firm* may increase the significance of threats compared to a lower-level employee.

c. The level of assurance of the *attest engagement*. For example, employment relationships with an audit *client* may increase the significance of *threats* compared to other *attest engagements*.

d. The nature and scope of the activity to be performed. Activities such as the following may increase the significance of *threats*:

   i. Performing activities the *member* is prohibited from performing under an *interpretation* of the "Nonattest Services" subtopic [1.295]

   ii. Performing activities that affect the subject matter of the *attest engagement,* such as the *attest client's financial statements*

   iii. Performing activities that affect the *client's* internal controls over financial reporting

   iv. Performing management responsibilities

   v. Performing activities involving marketing, influencing, or advertising that could create advocacy *threats* by promoting an *attest client's* interests or positions

e. The size and structure of the *attest client.* For example, simultaneous employment or association with a very small *attest client* may increase the significance of *threats* compared to a larger *attest client*.

f. The length and status of simultaneous employment or association. For example, a full-time or permanent position may increase the significance of *threats* compared to a position that is part-time or temporary.

g. The value of the compensation to be paid to the *member*, including any fringe benefits. For example, a value that is material to the *member's* net worth may increase the significance of *threats*.

.05 If *threats* are not at an *acceptable level, safeguards* should be applied to eliminate or reduce the *threats* to an *acceptable level*. Application of more than one *safeguard* may be necessary. If *threats* cannot be eliminated or reduced to an *acceptable level, independence* would be *impaired.* [Prior reference: paragraph .02C of ET section 101]

.06 Examples of actions that might be *safeguards* include the following:

a. Designating an appropriate reviewer who has not provided services to the *attest client* to review the attest work performed

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b. Modifying the individual's position or role at the *attest client* sufficiently that *threats* to *independence* are reduced to an *acceptable level*

.07 Communication with *those charged with governance* regarding evaluation of the *threats* to *independence* is not by itself a sufficient *safeguard*; however, it may be considered a *safeguard* in conjunction with other *safeguards*, such as those noted in paragraph .06.

Independent Contractors

.08 When an employee of an *attest client* is engaged as an independent contractor by the *firm* to perform *professional services* for the *attest client*, the familiarity, management participation, advocacy, self-interest, or self-review *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* and *independence* would be *impaired* if that same employee is any one of the following:

a. A member of the *attest engagement team* for the same *attest client*

b. An *individual in a position to influence the attest engagement* for the same *attest client*

c. In a *key position* at the same *attest client*

d. Serving in a role held by *those charged with governance* at the same *attest client*

.09 Provided the role is not prohibited by paragraph .08*a*–*d*, an appropriate person in the firm should apply the "Conceptual Framework for Independence" interpretation [1.210.010] when an independent contractor of a *firm* provides professional services to an *attest client* at which the contractor is employed. When applying the conceptual framework, the appropriate person should consider the information in paragraphs .04–.07.

Exceptions

.10 *Threats* will be at an *acceptable level* and *independence* will not be *impaired* when a *partner* or professional employee of the *member's firm* serves as an adjunct faculty member of an educational institution that is an *attest client* of the *firm* and the *partner* or professional employee meets all the following *safeguards*:

a. Is not in a *key position* or in a role held by *those charged with governance* at the educational institution

b. Is not a member of the *attest engagement team*

c. Is not an *individual in a position to influence the attest engagement*

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.11 *Threats* will be at an *acceptable level* and *independence* will not be *impaired* when a *member* in a government audit organization performs an *attest engagement* with respect to the government entity and the head of the government audit organization meets at least one of the following criteria:

a. Is directly elected by voters of the government entity with respect to which *attest engagements* are performed

b. Is appointed by a legislative body and is subject to removal by a legislative body

c. Is appointed by someone other than the legislative body, as long as the appointment is confirmed by the legislative body and removal is subject to oversight or approval by the legislative body

.12 When a *partner* or professional employee of the *member's firm* is employed by the *attest client* and compliance with a relevant employment law or regulation at the federal, state, or local level (for example, the Uniformed Services Employment and Reemployment Rights Act affecting members of the armed forces) would conflict with this *interpretation*, *threats* will be at an *acceptable level* and *independence* will not be *impaired* so long as the *partner* or professional employee meet all the following *safeguards*:

a. Is not in a *key position* or in a role held by *those charged with governance* at the *attest client*

b. Is not a member of the *attest engagement team*

c. Is not an *individual in a position to influence the attest engagement*

.13 Refer to the "Client Affiliates" interpretation [1.224.010] under the "Independence Rule" [1.200.001] for additional guidance on simultaneous employment or association with certain *affiliates* of a *financial statement attest client*.

.14 Upon termination of employment or association with an *attest client*, the *partner* or professional employee should comply with the requirements of the "Former Employment or Association With an Attest Client" interpretation [1.277.010] of the "Independence Rule" [1.200.001].

.15 *Members* that are *simultaneously employed or associated* with an *attest client* should consider their obligations as a member in business under part 2 of the code.

[See Revision History Table.]

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1.275.007 Staff Augmentation Arrangements

.01 In this interpretation, staff augmentation arrangements involve lending *firm* personnel (augmented staff) to an *attest client* whereby the *attest client* is responsible for the direction and supervision of the activities performed by the augmented staff. Under such arrangements, the *firm* bills the *attest client* for the activities performed by the augmented staff but does not direct or supervise the actual performance of the activities.

.02 If a *partner* or professional employee of the *member's firm* serves as augmented staff for an *attest client*, familiarity, management participation, advocacy, or self-review *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* would not be at an *acceptable level* and *independence* would be *impaired* unless all the following *safeguards* are met:

a. The staff augmentation arrangement is being performed due to an unexpected situation that would create a significant hardship for the *attest client* to make other arrangements.

b. The augmented staff arrangement is not expected to reoccur.

c. The augmented staff arrangement is performed for only a short period of time. There is a rebuttable presumption that a short period of time would not exceed 30 days.

d. The augmented staff neither participates in, nor is in a position to influence, an *attest engagement* covering any period that includes the staff augmentation arrangement.

e. The augmented staff performs only activities that would not be prohibited by the "Nonattest Services" subtopic [1.295] of the "Independence Rule" [1.200.001].

f. The *member* is satisfied that management of the *attest client* designates an individual or individuals who possess suitable skill, knowledge, and experience, preferably within senior management, to be responsible for

    i. determining the nature and scope of the activities to be provided by the augmented staff;

    ii. supervising and overseeing the activities performed by the augmented staff; and

    iii. evaluating the adequacy of the activities performed by the augmented staff and the findings resulting from the activities.

.03 Refer to the "Agreed-Upon Procedure Engagements Performed in Accordance With SSAEs" interpretation [1.297.020] and paragraph .02*f* of the "Client Affiliates" interpretation [1.224.010] of the "Independence Rule" [1.200.001] for additional guidance.

Effective Date

.04 This interpretation is effective November 30, 2021.

[See Revision History Table.]

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1.275.010 Honorary Director or Trustee of a Not-for-Profit Organization

.01 When a *partner* or professional employee of a *member's firm* is asked to lend the prestige of his or her name to a not-for-profit organization (the assumption is that the organization limits its activities to charitable, religious, or civic or other matters of a similar nature) by serving as an honorary director or trustee of the organization during the period covered by the *financial statements* or during the *period of the professional engagement*, familiarity, self-review, or management participation *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist. However, *threats* would be at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* are met:

a. The position is clearly honorary and the individual holds the position in name only.

b. The individual cannot vote or otherwise participate in board or management responsibilities.

c. If the individual is named in letterheads and externally circulated materials, the individual is identified as an honorary director or honorary trustee. [Prior reference: paragraph .06 of ET section 101]

.02 *Members* that are simultaneously employed or associated with an *attest client* should consider their obligations as a *member in business* under part 2 of the code. [No prior reference: new content]

Effective Date

.03 Paragraph .02 of this interpretation is effective December 15, 2014.

1.275.015 Member of Advisory Board

.01 If a *partner* or professional employee of a *member's firm* serves on an advisory board of an *attest client*, familiarity, self-review, or management participation *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist. However, *threats* would be at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* are met:

a. The responsibilities of the advisory board are in fact advisory in nature.

b. The advisory board has no authority to make nor does it appear to make management decisions on behalf of the *attest client*.

c. The advisory board and those having authority to make management decisions, including the board of directors or its equivalent, are distinct groups with minimal, if any, common membership. [Prior reference: paragraphs .144–.145 of ET section 191]

.02 *Members* in such positions should consider their obligations as *members in business* under part 2 of the code. [No prior reference: new content]

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Effective Date

.03 Paragraph .02 of this interpretation is effective December 15, 2014.

1.275.020 Member of Governmental Advisory Committee

.01 If a *partner* or professional employee of the *firm* serves on a citizens' advisory committee that is studying possible changes in the form of a county government that is an *attest client* of the *member's firm*, familiarity, self-review, or management participation *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist. However, *threats* would be at an *acceptable level* and *independence* would not be *impaired* with respect to the county.

.02 If a *partner* or professional employee of the *firm* serves on an advisory committee appointed to study the financial status of the state in which the county is located, *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level*. Accordingly, *independence* would not be *impaired* with respect to the county. [Prior reference: paragraphs .039–.040 of ET section 191]

.03 *Members* in such positions should consider their obligations as *members in business* under part 2 of the code. [No prior reference: new content]

Effective Date

.04 Paragraph .03 of this interpretation is effective December 15, 2014.

1.275.025 Individual in a Campaign Treasurer or Similar Financial Position

.01 For purposes of this interpretation, a campaign treasurer would also include individuals with similar financial responsibilities as a campaign treasurer. While other campaign positions may result in *threats* to compliance with the "Independence Rule" [1.200.001], such positions are not covered by this interpretation. Accordingly, *members* should consult the Conceptual Framework for Independence [1.210.010] if *partners* or professional employees serve in campaign positions not specifically addressed by this interpretation.

Campaign Organization Is Attest Client

.02 If during the *period of the professional engagement* or during the period covered by the *financial statements*, a *partner* or professional employee of a *member's firm* serves as a campaign treasurer and the campaign organization is an *attest client*, the management participation *threat* to the *member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

Candidate Running for Election of a Governmental Entity That Is an Attest Client

.03 If, during the *period of the professional engagement* or during the period covered by the *financial statements*, a *partner* or professional employee serves as a campaign treasurer for either (*a*) an elected official of a governmental entity that is an *attest client*, or (*b*)

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for a candidate who is running for election but is not yet an elected official of such *attest client*, then advocacy, adverse interest, and familiarity *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

Political Party Is Attest Client

.04 If during the *period of the professional engagement* or during the period covered by the *financial statements* a *partner* or professional employee serves as a campaign treasurer for a candidate and the political party for which the candidate is a member is an *attest client*, advocacy and familiarity *threats* may exist. Accordingly, a responsible individual within the *firm* should evaluate the significance of the *threats* to determine if the *threats* are at an *acceptable level*. If the responsible individual within the *firm* determines that *threats* are not at an *acceptable level*, he or she should apply *safeguards* to eliminate or reduce the *threats* to an *acceptable level*. However, *threats* would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* and *independence* would be *impaired* if the candidate is a member of one of the political party's governing bodies.

General

.05 In the state and local government environment, *members* should consult the "State and Local Government Client Affiliates" interpretation [1.224.020] to determine which entities related to their *attest client* require the *member's independence*. Also refer to the "Conflicts of Interest for Members in Public Practice" interpretation [1.110.010] of the "Integrity and Objectivity Rule" [1.100.001] for additional guidance. In addition, *members* in such positions should consider their obligations as *members in business* under part 2 of the code. [Prior reference: paragraphs .164–.165 of ET section 191]

Grandfathered Positions

.06 *Independence* would not be *impaired* as a result of the more restrictive requirements of this interpretation that are effective on May 31, 2015, provided the *attest engagement* commenced prior to April 30, 2015, and the *member* was in compliance with the preexisting requirements of this interpretation.

[See Revision History Table.]

1.275.030 Member of Federated Fund-Raising Organization

.01 When a *partner* or professional employee of a *member's firm* serves as a director or an officer of a federated fund-raising organization, such as United Way (the organization), during the period covered by the *financial statements* or during the *period of the professional engagement*, and a charity that receives funds from the organization is an *attest client* of the *member's firm* , management participation or self-review *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the organization has managerial control over the charity, the *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and

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could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.03 Even if the organization does not have managerial control over the charity, a conflict of interest could arise that may create a *threat* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001]. In such situations, the *member* should consult the "Conflicts of Interest" interpretation [1.110.010]. [Prior reference: paragraphs .027–.028 of ET section 191]

.04 In addition, *members* in such positions should consider their obligations as *members in business* under part 2 of the code. [No prior reference: new content]

Effective Date

.05 Paragraph .04 of this interpretation is effective December 15, 2014.

1.275.035 Member of Organization that Receives Funds From Fund-Raising Organization

.01 When a *partner* or professional employee of a *member's firm* serves on the board of directors of an organization during the period covered by the *financial statements* or during the *period of the professional engagement* and the organization receives funds from a fund-raising foundation that is an *attest client*, management participation or self-review *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the fund-raising foundation functions solely to raise funds for that organization, the *threat* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.03 However, if the directorship is clearly honorary, in accordance with the "Honorary Director or Trustee of a Not-for-Profit Organization" interpretation [1.275.010] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level*. Accordingly, *independence* would not be *impaired*. [Prior reference: paragraphs .128–.129 of ET section 191]

.04 *Members* in such positions should consider their obligations as a *member in business* under part 2 of the code. [No prior reference: new content]

Effective Date

.05 Paragraph .04 of this interpretation is effective December 15, 2014.

1.277 Former Employment or Association With an Attest Client

1.277.010 Former Employment or Association With an Attest Client

.01 This interpretation applies to *covered members* who were formerly employed by an entity or associated with an entity as an officer, a director, a promoter, an underwriter, a voting trustee, or a trustee for the entity's pension or profit sharing trust and subsequently became employed by a *firm* that provides attest service to that entity.

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.02 When a *member* becomes a *partner* or professional employee of a *firm* that provides attest services to an entity where the *member* was formerly employed or otherwise associated, familiarity, self-interest, self-review, or management participation *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist.

.03 If a *covered member* participates on the *client's attest engagement* or is an *individual in a position to influence the attest engagement* covering any period that includes the *covered member's* former employment or association with the *attest client*, *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.04 If a *member* fails to disassociate from the *attest client* before becoming a *covered member*, *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and *independence* would be *impaired* unless all of the following *safeguards* are met:

a. The *covered member* ceases to participate in all employee health and welfare plans sponsored by the *attest client*, unless the *attest client* is legally required to allow the *member* to participate in the plan (for example, the Consolidated Omnibus Budget Reconciliation Act [COBRA]) and the *member* pays 100 percent of the *member's* portion of the cost of participation on a current basis.

b. The *covered member* ceases to participate in all other employee benefit plans by liquidating or transferring, at the earliest date permitted under the plan, all vested benefits in the *attest client's* defined benefit plans, defined contribution plans, *share-based compensation arrangements*, deferred compensation plans, and other similar arrangements.

   However, when a *covered member's* participation in one of these plans results from former employment or association with an *attest client*, *threats* would be at an *acceptable level* and *independence* would not be *impaired* provided the liquidation or transfer of any vested benefits is either not permitted under the terms of the plan or would result in a penalty significant to the benefits being imposed upon such liquidation or transfer and the *covered member*

   i. does not participate on the *attest engagement team* or

   ii. is not an *individual in a position to influence the attest engagement*.

   A penalty includes an early withdrawal penalty levied under the applicable tax law but excludes other income taxes that would be owed, or market losses that may be incurred, as a result of such liquidation or transfer.

c. The *covered member* disposes of any *direct financial interest* or material *indirect financial interests* in the *attest client*.

d. The *covered member* collects or repays any *loans* to or from the *attest client*, except for *loans* specifically permitted or grandfathered by the *interpretations* of the "Loans, Leases, and Guarantees" subtopic [1.260] under the "Independence Rule."

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e. *Covered members* should evaluate whether other relationships with the *attest client* create *threats* that require the *member* to apply *safeguards* to reduce those *threats* to an *acceptable level*. [Prior reference: paragraph .02 of ET section 101]

1.279 Considering or Subsequent Employment or Association With an Attest Client

1.279.010 Considering Employment or Association With an Attest Client

.01 This interpretation applies to a member of the *attest engagement team* or an *individual in a position to influence the attest engagement* (individual) who intends to seek or discuss potential employment or association with an *attest client* or is in receipt of a specific offer of employment from an *attest client*.

.02 The undue influence and self-interest *threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* are met:

a. The individual promptly reports such consideration or offer to an appropriate person in the *firm*.

b. The individual immediately ceases participation in the engagement and does not provide any services to the *attest client* until the employment offer is rejected or employment is no longer sought.

c. If a *covered member* becomes aware that an individual is considering employment or association with an *attest client*, the *covered member* should notify an appropriate person in the *firm*.

d. The appropriate person in the *firm* should consider whether, based on the nature of the engagement and the individual involved, the *firm* should perform additional procedures to provide reasonable assurance that any work that the individual performed for the *attest client* was performed in compliance with the "Integrity and Objectivity Rule" [1.100.001].

September 2025

The following paragraph is added, effective September 15, 2026.

.03 If the individual intends to accept an offer of employment or otherwise become associated with the *attest client*, see the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] of the "Independence Rule" [1.200.001] for additional requirements.

[See Revision History Table.]

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September 2025

Conforming changes to the following paragraph, shown in grey-shaded text, are effective September 15, 2026.

.03 If the individual accepts an offer of employment or otherwise becomes associated with the *attest client* in a *key position* and is not subject to the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005], see the "Subsequent Employment or Association With an Attest Client" interpretation [1.279.020] of the "Independence Rule" [1.200.001] for additional requirements. [Prior reference: paragraph .04 of ET section 101]

[See Revision History Table.]

1.279.020 Subsequent Employment or Association With an Attest Client

.01 This interpretation applies to *partners* and professional employees who leave their *firms* and are subsequently employed by, or associated with, one of the *firm's attest clients* in a *key position*.

.02 The familiarity, self-interest, undue influence, or management participation *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and *independence* would be *impaired* unless all of the *safeguards* in items *a–e* of the following list are met:

Individual Safeguards

a. Amounts due to the former *partner* or professional employee for his or her previous interest in the *firm* and unfunded, vested retirement benefits cannot be material to the *firm*, and the underlying formula used to calculate the payments remain fixed during the payout period. The *firm* may adjust the retirement benefits for inflation and pay interest on amounts due.

b. The former *partner* or professional employee is not in a position to influence the *firm's* operations or financial policies.

c. The former *partner* or professional employee does not participate or appear to participate in the *firm's* business and is not otherwise associated with the *firm*, regardless of whether he or she is compensated for such participation or association, once employment or association with the *attest client* begins. For example, the individual would appear to participate in, or be associated with, the *firm* if

    i. the individual provides consultation to the *firm*;

    ii. the *firm* provides the individual with an *office* and related amenities, such as administrative and technology services;

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iii. the individual's name is included in the *firm's office* directory; or

iv. the individual is identified as a member of the *firm* in membership lists of business, professional, or civic organizations, unless the *member* is clearly designated as retired.

Ongoing Attest Engagement Team Safeguards

d. The ongoing *attest engagement team* should consider whether to modify the engagement procedures to adjust for the risk that the former *partner's* or professional employee's prior knowledge of the audit plan could reduce audit effectiveness. In addition, if the individual will have significant interaction with the *attest engagement team*, an appropriate individual in the *firm* should evaluate whether the existing *attest engagement team* members have sufficient experience and stature to deal effectively with the individual in conducting the engagement.

e. If the former *partner* or professional employee joins the *attest client* in a *key position* within one year of disassociating from the *firm* and has significant interaction with the *attest engagement team*, an appropriate professional in the *firm* should review the subsequent *attest engagement* to determine whether the engagement team members maintained the appropriate level of skepticism when evaluating the individual's representations and work. The professional applying this *safeguard* should have appropriate stature, expertise, and objectivity. In performing this review, the professional should consider relevant factors, such as the following:

i. The position that the individual assumed at the *attest client*.

ii. The position that the individual held at the *firm*.

iii. The nature of the services that the individual provided to the *attest client*. The professional should take appropriate actions, as deemed necessary, based on the results of this review.

.03 The procedures performed in applying items *d–e* of paragraph .02 of this interpretation will depend on several factors, including the following:

a. Whether the individual served on the engagement team

b. The positions that the individual held at the *firm* and has accepted at the *attest client*

c. The length of time that has elapsed since the individual left the *firm*

d. The circumstances of the individual's departure

.04 An inadvertent and isolated failure to apply items *d–e* in paragraph .02 of this interpretation would not *impair independence* provided that the relevant parties perform the required procedures promptly upon discovery of the failure to do so and all other provisions of this interpretation are met. [Prior reference: paragraph .04 of ET section 101]

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1.280 Memberships

1.280.010 Member of a Social Club

.01 If a *covered member* belongs to a social club (for example, a country club, tennis club) that is an *attest client* and is required to acquire a pro rata share of the club's equity or debt securities, then management participation, self-review, and self-interest *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. *Threats* would be at an *acceptable level* if the club membership is essentially a social matter, because such equity or debt ownership would not be considered to be a *direct financial interest*. Accordingly, *independence* would not be *impaired*.

.02 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if a *partner* or professional employee is simultaneously employed or associated with the *attest client's* social club as described in the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] of the "Independence Rule." Accordingly, *independence* would be *impaired*. [Prior reference: paragraphs .033–.034 of ET section 191]

The following paragraph replaces paragraph .02 in its entirety, effective September 15, 2026.

.02 Refer to the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] for guidance on relationships that could *impair independence*.

[See Revision History Table.]

1.280.020 Member of a Trade Association

.01 If a *covered member* belongs to a trade association that is an *attest client*, management participation or self-review *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if a *partner* or professional employee is simultaneously employed or associated with the trade association as described in the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] of the "Independence Rule." Accordingly, *independence* would be *impaired*. [Prior reference: paragraphs .003–.004 of ET section 191]

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1.280.030 Member of Common Interest Realty Association

.01 If a *covered member* belongs to a common interest realty association (CIRA) because the *covered member* owns or leases real estate, then management participation, self-interest, self-review, or advocacy *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. Examples of CIRAs include cooperatives, condominium associations, planned unit developments, homeowners associations, and timeshare developments.

.02 *Threats* would be at an *acceptable level* and *independence* would not be *impaired* if all of the following *safeguards* are met:

a. The CIRA performs functions similar to local governments, such as public safety, road maintenance, and utilities.

b. The *covered member's* annual assessment is not material to either the *covered member* or the CIRA's operating budgeted assessments.

c. The liquidation of the CIRA or the sale of common assets would not result in a distribution to the *covered member*.

d. The CIRA's creditors would not have recourse to the *covered member's* assets if the CIRA became insolvent.

.03 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and cannot be reduced to an *acceptable level* by the application of *safeguards* if a *partner* or professional employee is simultaneously employed or associated with the CIRA as described in the "Simultaneous Employment or Association With an Attest Client" interpretation [1.275.005] of the "Independence Rule." Accordingly, *independence* would be *impaired*.

.04 A *member* who has a personal or professional relationship with a real estate developer or management company that is associated with the CIRA should consider the "Conflicts of Interest" interpretation [1.110.010] under the "Integrity and Objectivity Rule" [1.100.001]. [Prior reference: paragraphs .061–.062 of ET section 191]

1.280.040 Member of a Credit Union

.01 When a *covered member* is a member of a credit union that is an *attest client*, the self-interest *threat* would be at an *acceptable level*, and *independence* would not be *impaired*, if the *covered member* individually qualifies to join the credit union other than by virtue of the *professional services* provided to the credit union. However, if during the *period of the professional engagement* the *member's* qualification to join the credit union is a result of the *professional services* provided to the credit union, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.02 *Covered members* may be subject to additional restrictions, as described in the "Depository Accounts" interpretation [1.255.010] and the "Loans and Leases With Lending

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Institutions" interpretation [1.260.020] of the "Independence Rule" [1.200.001]. In addition, *partners* and professional employees may be subject to additional restrictions, as described in paragraph .03 of the "Overview of Financial Interests" interpretation [1.240.010] of the "Independence Rule." [Prior reference: paragraphs .150–.151 of ET section 191]

[See Revision History Table.]

1.285 Gifts and Entertainment

1.285.010 Offering or Accepting Gifts or Entertainment

.01 For purposes of this interpretation, the *attest client* also includes an individual in a *key position* with the *attest client* or an individual with a *beneficial ownership interest* (known through reasonable inquiry) that gives the individual *significant influence* over the *attest client*.

.02 Accepting a gift from an *attest client* during the *period of the professional engagement* may create undue influence or self-interest *threats* to a *member's* compliance with the "Independence Rule" [1.200.001]. If a *member's firm*, a member of the *attest engagement team*, or an *individual in a position to influence the attest engagement* accepts a gift from an *attest client* and the value is not clearly insignificant to the recipient, the *threat* to the *member's* compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.03 Accepting entertainment from an *attest client* during the *period of the professional engagement* may create undue influence or self-interest *threats* to a *member's* compliance with the "Independence Rule" [1.200.001]. If a *covered member* accepts entertainment from an *attest client* that is not reasonable in the circumstances, the *threats* to the *member's* compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.04 Offering gifts or entertainment to an *attest client* during the *period of the professional engagement* may create a familiarity *threat* to a *member's* compliance with the "Independence Rule" [1.200.001]. If a *covered member* offers a gift or entertainment to an *attest client* that is not reasonable in the circumstances, the *threat* to the *member's* compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

.05 The *member* should exercise judgment in determining whether gifts or entertainment would be considered reasonable in the circumstances. Examples of relevant facts and circumstances include the following:

a. The nature of the gift or entertainment

b. The occasion giving rise to the gift or entertainment

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c. The cost or value of the gift or entertainment

d. The nature, frequency, and value of other gifts and entertainment offered or accepted

e. Whether the entertainment was associated with the active conduct of business directly before, during, or after the entertainment

f. Whether other *attest clients* also participated in the entertainment

g. The individuals from the *attest client's* and *member's firm* who participated in the entertainment

.06 Refer to the "Offering or Accepting Gifts or Entertainment" interpretation [1.120.010] of the "Integrity and Objectivity Rule" [1.100.001] for additional guidance. [Prior reference: paragraphs .228–.229 of ET section 191]

[See Revision History Table.]

A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: New Ethics Rulings Under Rule 102 — Integrity and Objectivity and Rule 101 — IndependenceBackground and Basis for Conclusions: New Ethics Rulings Under Rule 102 — Integrity and Objectivity and Rule 101 — Independence" in *Basis for Conclusions Documents*.

A nonauthoritative question and answer regarding campaign contributions made to the campaign of an individual that is associated with an attest client in a key position or holds a financial interest in an attest client that is material or enables the individual to exercise significant influence over the attest client is available. See Ethics Questions & Answers section 100.01Ethics Questions & Answers section 100.01, "Campaign Contributions."

1.290 Actual or Threatened Litigation

1.290.010 Actual or Threatened Litigation

.01 The relationship between an *attest client's* management and a *covered member* must be characterized by complete candor and full disclosure regarding all aspects of the *attest client's* business operations. In addition, the *covered member* must not be biased so that the *covered member* can exercise professional judgment and objectivity in evaluating management's financial reporting decisions.

.02 Litigation or the expressed intention to commence litigation between a *covered member* and an *attest client* or its management and, in some cases, other parties during the *period of the professional engagement* may create self-interest or adverse interest *threats*

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to the *member's* compliance with the "Independence Rule" [1.200.001]. Accordingly, *covered members* should evaluate all such circumstances in accordance with this interpretation.

.03 Litigation or the expressed intention to commence litigation between a *covered member* and an *attest client* or its management and, in some cases, other parties requires the *covered member* to assess the materiality of the litigation to the *covered member*, the *covered member's firm*, and the *attest client*. The *covered member's* assessment should include an evaluation of the nature of the matter(s) underlying the litigation and all other relevant factors.

Litigation Between the Attest Client and Member

.04 When an *attest client's* present management commences, or expresses an intention to commence, legal action against a *covered member*, the *covered member* and the *attest client's* management may be placed in adversarial positions in which self-interest may affect the *covered member's* objectivity and management's willingness to make complete disclosures.

.05 Accordingly, *independence* may be *impaired* whenever the *covered member* and the *covered member's attest client* or its management are in threatened or actual positions of material adverse interests due to threatened or actual litigation.

.06 Situations involving threatened or actual litigation are complex and diverse, making it difficult to identify precise points at which *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level*. There are situations regarding litigation between *covered members* and *attest clients* in which *threats* to the *covered member's* compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by *safeguards* and *independence* would be *impaired*. Examples of these situations are:

a. An *attest client's* present management commences litigation alleging deficiencies in audit work performed for the *attest client* or expresses its intention to commence such litigation, and the *covered member* concludes that it is probable that such a claim will be filed.

b. A *covered member* commences litigation against an *attest client's* present management alleging management fraud or deceit.

.07 If threatened or actual litigation is unrelated to the performance of an *attest engagement* and is for an amount that is not material to the *covered member's firm* or the *attest client*, *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level*, and *independence* would not be *impaired*. Such claims may arise, for example, out of immaterial disputes regarding billings for services, results of tax or management services advice, or similar matters.

Litigation by Security Holders

.08 A *covered member* may also become involved in litigation (primary litigation) in which the *covered member* and the *attest client* or its management are defendants. For example, one or more stockholders may bring a stockholders' derivative action or class-action

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lawsuit against the *attest client* or its management, the *attest client's* officers, directors, or underwriters, and *covered members*.

.09 Such primary litigation by itself would not *threaten* the *covered member's* compliance with the "Independence Rule" [1.200.001]. However, if other circumstances exist that may create *threats*, the *covered member* should apply the "Conceptual Framework for Independence" interpretation [1.210.010] to evaluate whether the *threats* are at an *acceptable level*. For example, *threats* will exist if cross-claims are filed against the *covered member* alleging that the *covered member* is responsible for any deficiencies in work performed for the *attest client* or if the *covered member*, as a defense, alleges that the *attest client's* management engaged in fraud or deceit.

.10 The following are examples of situations in which *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an acceptable level by *safeguards*, thereby *impairing independence*:

a. The *attest client* or its management or directors have filed cross-claims to protect a right to legal redress in the event of a future adverse decision in the primary litigation (or, in lieu of cross-claims, agreements to extend the statute of limitations), and there is a significant risk that the cross-claim will result in a settlement or judgment in an amount that is material to the *covered member's firm* or the *attest client*.

b. The *attest client's* underwriter and the *attest client* or its present management assert cross-claims against the *covered member*.

.11 If only the underwriter or officers or directors of the *covered member's* other *attest clients* file cross-claims against the *covered member*, *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* unless other circumstances create *threats* to compliance with the "Independence Rule."

Other Third-Party Litigation

.12 A *lending institution* or other creditor, security holder, or insurance company that alleges reliance on the *attest client's financial statements* as a basis for having extended credit or insurance coverage to an *attest client* may commence third-party litigation against the *covered member* to recover their loss. An example is an insurance company commencing litigation either as a result of receiving an assignment of a claim or under subrogation rights against the *covered member* in the *attest client's* name to recover losses that the insurer reimbursed to the *attest client*. If the *attest client* is only the nominal plaintiff, *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* unless other circumstances exist, such as when the *covered member* alleges, as a defense, that present management engaged in fraud or deceit. The *attest client* is a nominal plaintiff when the insurance company or lender sues in the name of the *attest client* as a result of obtaining subrogation rights or an assignment from the *attest client* and the *attest client* does not have a beneficial interest in the claim.

.13 If the real party in interest in the litigation (for example, the insurance company) is also the *covered member's attest client* (the plaintiff client), *threats* to the *covered member's*

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compliance with the "Independence Rule" [1.200.001] may exist if the litigation carries a significant risk of a settlement or judgment in an amount that would be material to the *covered member's firm* or the plaintiff client.

Termination of Impairment

.14 *Threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] would be eliminated or reduced to an *acceptable level* when the parties reach a final resolution of the matter(s) at issue and the matter(s) no longer affects the relationship between the *covered member* and the *attest client*, as described in paragraph .01 of this interpretation. The *covered member* should determine whether the conditions of such resolution have effectively eliminated such *threats* or reduced them to an *acceptable level*. [Prior reference: paragraph .08 of ET section 101]

[See Revision History Table.]

1.295 Nonattest Services

1.295.010 Scope and Applicability of Nonattest Services

.01 When a *member* performs nonattest services for an *attest client*, self-review, management participation, or advocacy *threats* to the *member's* compliance with the "Independence Rule" [1.200.001] may exist. When significant *independence threats* exist during the *period of the professional engagement* or the period covered by the *financial statements* (except as provided for in paragraph .03), *independence* will be *impaired* unless the *threats* are reduced to an *acceptable level* and any requirements included in the *interpretations* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule" have been met.

.02 For purposes of the *interpretations* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule" [1.200.001], the term member includes the *member's firm*.

.03 *Period of engagement.* A member's *independence* would not be *impaired* if the member performed nonattest services that would have otherwise *impaired independence* during the period covered by the *financial statements* if all of the following conditions exist:

a. The nonattest services were provided prior to *period of the professional engagement*.

b. The nonattest services related to periods prior to the period covered by the *financial statements*.

c. The *financial statements* for the period to which the nonattest services relate were audited by another *firm* (or in the case of a review engagement, reviewed or audited by another *firm*).

.04 *Activities related to attest services.* Performing attest services often involves communications between the member and *client* management regarding

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a. the *client's* selection and application of accounting standards or policies and *financial statement* disclosure requirements;

b. the appropriateness of the *client's* methods used in determining accounting and financial reporting;

c. adjusting journal entries that the member has prepared or proposed for *client* management consideration; and

d. the form or content of the *financial statements*.

These communications are considered a normal part of the *attest engagement* and are not considered nonattest services subject to the "General Requirements for Performing Nonattest Services" [1.295.040] and "Documentation Requirements When Providing Nonattest Services" [1.295.050] interpretations.

.05 However, the member should exercise judgment in determining whether his or her involvement has become so extensive that it would constitute performing a separate service which would be subject to the "General Requirements for Performing Nonattest Services" interpretation [1.295.040].

.06 For example, activities such as *financial statement* preparation, cash-to-accrual conversions, and reconciliations are considered outside the scope of the *attest engagement* and, therefore, constitute a nonattest service. Such activities would not *impair independence* if the requirements of the *interpretations* of the "Nonattest Services" subtopic [1.295] are met.

.07 *Engagements subject to independence rules of certain regulatory or standard-setting bodies. Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards* if a member is not in compliance with the *independence* regulations of authoritative regulatory bodies that are more restrictive than the *interpretations* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule" (examples of such authoritative bodies are the SEC, the Government Accountability Office [GAO], the Department of Labor [DOL], the Public Company Accounting Oversight Board [PCAOB], and state boards of accountancy) when a member performs nonattest services for an *attest client* and is required to be independent of the *attest client* under the regulations of the applicable regulatory body. *Independence* would be *impaired* under these circumstances. [Prior reference: paragraph .05 of ET section 101]

.08 Refer to the "Staff Augmentation Arrangements" interpretation [1.275.007] when the engagement involves lending *firm* personnel (augmented staff) to an *attest client* whereby the *attest client* is responsible for the direction and supervision of the activities performed by the augmented staff.

Effective Date

.09 Paragraph .06 of this interpretation is effective for engagements covering periods beginning on or after December 15, 2014.

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[See Revision History Table.]

A nonauthoritative question and answer regarding the period of the professional engagement is available. See Ethics Questions & Answers section 200.02Ethics Questions & Answers section 200.02, "Period of Impairment."

1.295.020 Cumulative Effect on Independence When Providing Multiple Nonattest Services

.01 The *interpretations* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule" [1.200.001] include various examples of nonattest services that individually would not *impair independence* because the *safeguards* in the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] reduce the self-review and management participation *threats* to an *acceptable level*. However, performing multiple nonattest services can increase the significance of these *threats* as well as other *threats* to *independence*.

.02 Before agreeing to perform nonattest services, the member should evaluate whether the performance of multiple nonattest services by the *member* or *member's firm* in the aggregate creates a significant *threat* to the member's *independence* that cannot be reduced to an *acceptable level* by the application of the *safeguards* in the "General Requirements for Performing Nonattest Services" interpretation [1.295.040].

.03 In situations in which a member determines that *threats* are not at an *acceptable level*, *safeguards* in addition to those in the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] should be applied to eliminate the *threats* or reduce them to an *acceptable level*. If no *safeguards* exist that will eliminate or reduce the *threats* to an *acceptable level*, *independence* would be *impaired*.

.04 For purposes of this interpretation, the member is not required to consider the possible *threats* to *independence* created due to the provision of nonattest services by other *network firms* within the *firm's network*. [Prior reference: paragraph .05 of ET section 101]

Effective Date

.05 This interpretation is effective for engagements covering periods beginning on or after December 15, 2014.

1.295.030 Management Responsibilities

.01 If a member were to assume a management responsibility for an *attest client*, the management participation *threat* would be so significant that no *safeguards* could reduce the *threat* to an *acceptable level* and *independence* would be *impaired*. It is not possible to specify every activity that is a management responsibility. However, management responsibilities involve leading and directing an entity, including making significant

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decisions regarding the acquisition, deployment, and control of human, financial, physical, and intangible resources.

.02 Whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgment. Examples of activities that would be considered management responsibilities and, as such, *impair independence* if performed for an *attest client*, include

a. setting policy or strategic direction for the *attest client.*

b. directing or accepting responsibility for actions of the *attest client's* employees except to the extent permitted when using internal auditors to provide assistance for services performed under auditing or attestation standards.

c. authorizing, executing, or consummating transactions or otherwise exercising authority on behalf of an *attest client* or having the authority to do so.

d. preparing *source documents*, in electronic or other form, that evidence the occurrence of a transaction.

e. having custody of an *attest client's* assets.

f. deciding which recommendations of the member or other third parties to implement or prioritize.

g. reporting to *those charged with governance* on behalf of management.

h. serving as an *attest client's* stock transfer or escrow agent, registrar, general counsel or equivalent.

i. accepting responsibility for the management of an *attest client's* project.

j. accepting responsibility for the preparation and fair presentation of the *attest client's financial statements* in accordance with the applicable financial reporting framework.

k. accepting responsibility for designing, implementing, or maintaining internal control.

l. performing ongoing evaluations of the *attest client's* internal control as part of its monitoring activities.

[Prior reference: paragraph .05 of ET section 101]

A nonauthoritative question and answer regarding management responsibilities and controllership services is available. See Ethics Questions & Answers section 200.03Ethics Questions & Answers section 200.03, "Controllership Services."

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1.295.040 General Requirements for Performing Nonattest Services

.01 When a member performs a nonattest service for an *attest client*, *threats* to the member's compliance with the "Independence Rule" [1.200.001] may exist. Unless an *interpretation* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule" states otherwise, *threats* would be at an *acceptable level*, and *independence* would not be *impaired*, when all the following *safeguards* are met:

a. The member determines that the *attest client* and its management agree to

   i. assume all management responsibilities as described in the "Management Responsibilities" interpretation [1.295.030].

   ii. oversee the service, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience. The member should assess and be satisfied that such individual understands the services to be performed sufficiently to oversee them. However, the individual is not required to possess the expertise to perform or re-perform the services.

   iii. evaluate the adequacy and results of the services performed.

   iv. accept responsibility for the results of the services.

b. The member does not assume management responsibilities (See the "Management Responsibilities" interpretation [1.295.030] of the "Independence Rule") when providing nonattest services and the member is satisfied that the *attest client* and its management will

   i. be able to meet all of the criteria delineated in item *a*;

   ii. make an informed judgment on the results of the member's nonattest services; and

   iii. accept responsibility for making the significant judgments and decisions that are the proper responsibility of management.

   If the *attest client* is unable or unwilling to assume these responsibilities (for example, the *attest client* cannot oversee the nonattest services provided or is unwilling to carry out such responsibilities due to lack of time or desire), the member's performance of nonattest services would *impair independence*.

c. Before performing nonattest services the member establishes and documents in writing his or her understanding with the *attest client* (board of directors, audit committee, or management, as appropriate in the circumstances) regarding

   i. objectives of the engagement,

   ii. services to be performed,

   iii. *attest client's* acceptance of its responsibilities,

   iv. member's responsibilities, and

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v. any limitations of the engagement.

.02 The *safeguards* in paragraph .01 and the "Documentation Requirements When Providing Nonattest Services" interpretation [1.295.050] of the "Independence Rule" [1.200.001] do not apply to certain routine activities performed by the member, such as providing advice and responding to the *attest client's* questions as part of the *attest client*-member relationship. However, in providing such services, the member must not assume management responsibilities, as described in the "Management Responsibilities" interpretation [1.295.030] of the "Independence Rule." [Prior reference: paragraph .05 of ET section 101]

[See Revision History Table.]

A nonauthoritative question and answer regarding routine activities is available. See Ethics Questions & Answers (Q&A) section 200.01Ethics Questions & Answers (Q&A) section 200.01, "Routine Activities."

Nonauthoritative questions and answers regarding suitable skill, knowledge, and experience are available. See Q&A sections 210.02–.10Q&A sections 210.02–.10 of Q&A section 210, *Nonattest Services — General Requirements*.

1.295.050 Documentation Requirements When Providing Nonattest Services

.01 Before performing nonattest services, the member should document in writing the member's understanding established with the *attest client*, as described in paragraph .01*c* of the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001].

.02 Failure to prepare the required documentation does not *impair independence* provided that the member did establish the understanding with the *attest client*. However, failure to prepare the required documentation would be considered a violation of the "Compliance With Standards Rule" [1.310.001].

.03 The documentation requirement does not apply to nonattest services performed prior to the *period of the professional engagement* for an *attest client*. However, for nonattest services provided during the period covered by the *financial statements*, the member should document in writing that the requirements of the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] were met prior to the *period of the professional engagement*, including the requirement to establish an understanding with the *attest client*. [Prior reference: paragraph .05 of ET section 101]

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Sample language for how to document your understanding with the attest client is available at https://pub.aicpa.org/codeofconduct/resourceseamlesslogin.aspx?prod=ethics&tdoc=et-qa&tptr=et-qa200Ethics Questions and Answers section 200, *Nonattest Services*.

1.295.105 Advisory Services

.01 Self-review or management participation *threats* to compliance with the "Independence Rule" [1.200.001] may exist when a member performs advisory services for an *attest client*.

.02 If the member's services are only advisory in nature and the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. provide advice, research materials, and recommendations to assist management in performing its functions and making decisions.

b. attend board meetings as a nonvoting advisor.

c. interpret *financial statements*, forecasts, or other analyses.

d. provide management with advice regarding its potential plans, strategies, or relationships.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if a member assumes any management responsibilities, as described in the "Management Responsibilities" interpretation [1.295.030]. Accordingly, *independence* is *impaired*. [Prior reference: paragraph .05 of ET section 101 and paragraphs .015–.016 of ET section 191]

1.295.110 Appraisal, Valuation, and Actuarial Services

.01 Self-review or management participation *threats* to compliance with the "Independence Rule" [1.200.001] may exist when a member performs appraisal, valuation, or actuarial service for an *attest client*.

.02 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if the member performs an appraisal, a valuation, or an actuarial service for an *attest client* when (*a*) the services involve a significant degree of subjectivity and (*b*) the results of the service, individually or when combined with other valuation, appraisal, or actuarial services, are material to the *attest client's financial statements*. Accordingly, *independence* would be *impaired* under these circumstances..

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.03 When performing appraisal, valuation, and actuarial services for an *attest client* that are permitted under this interpretation, all requirements of the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001] should be met, including that all significant assumptions and matters of judgment are determined or approved by the *attest client*, and the *attest client* is in a position to have an informed judgment on, and accepts responsibility for, the results of the service.

Valuations Involving a Significant Degree of Subjectivity

.04 Examples of valuations that generally involve a significant degree of subjectivity include, ESOPs, business combinations, or appraisals of assets or liabilities. Accordingly, if these services produce results that are material to the *attest client's financial statements*, *independence* would be *impaired*.

Actuarial Valuations of Pension or Postemployment Benefit Liabilities

.05 An actuarial valuation of an *attest client's* pension or postemployment benefit liabilities generally does not involve a significant degree of subjectivity because reasonably consistent results are produced when the same assumptions and information are used in performing the valuation. Therefore, *threats* would be at an *acceptable level* and *independence* would not be *impaired*.

Appraisal, Valuations, and Actuarial Services for Nonfinancial Statement Purposes

.06 *Threats* would be at an *acceptable level* if a member provided appraisal, valuation, or actuarial services solely for nonfinancial statement purposes. Some examples are appraisal, valuation, and actuarial services performed for tax planning or tax compliance, estate and gift taxation, and divorce proceedings. Accordingly, *independence* would not be *impaired*. [Prior reference: paragraph .05 of ET section 101]

A nonauthoritative question and answer regarding appraisal, valuation, and actuarial services is available. See Ethics Questions & Answers section 220.01Ethics Questions & Answers section 220.01, "Appraisal, Valuation, and Actuarial Service."

1.295.113 Assisting Attest Clients With Implementing Accounting Standards

.01 When a member assists an *attest client* with planning and executing the implementation of an accounting standard, self-review or management participation *threats* to compliance with the "Independence Rule" [1.200.001] may exist.

.02 If a member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an

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acceptable level and *independence* would not be *impaired* if, for example, a member does the following:

a. Develops and provides training to *attest client* personnel on the effects of the accounting standard

b. Researches, provides advice, makes recommendations, and assists management in identifying *financial statement* account balances, contracts, and transactions to be assessed under the accounting standard

c. Provides advice and recommendations related to the application of the accounting standard, including

    i. analyzing and advising management on the potential impact of the accounting standard on the entity's accounting policies, procedures, and internal controls

    ii. recommending possible revisions to existing policies, procedures, and internal controls

    iii. assisting the *attest client* with summarizing the *attest client's* analysis and policies related to the accounting positions under the accounting standard

    iv. preparing transition-related calculations to illustrate the impact of the application of the accounting standard for management's consideration and selection

d. Provides observations and recommendations on management's existing overall project plan timeline or assists management in developing an overall project plan timeline to adopt the accounting standard

e. Assists management in drafting implementation strategies or methods used to implement the accounting standard

f. Assists the *attest client* in developing implementation templates or provides the *attest client* with firm-developed templates or tools, including those related to specific calculations under the accounting standard that meet the exception in paragraph .03*a* of the "Information Systems Services" interpretation [1.295.145] under the "Independence Rule," provided the attest client's management understands the nature of any underlying calculations and the impact the results will have on the financial statements

g. Proposes standard journal entries or adjustments to existing journal entries necessary for adoption of the accounting standard, subject to *attest client* approval in accordance with paragraph .02*e* of the "Bookkeeping, Payroll, and Other Disbursements" interpretation [1.295.120]

h. Provides recommendations related to existing or new information systems as a result of the accounting standard

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of

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safeguards, and *independence* would be *impaired* if, for example, a member does any of the following:

a. Leads or supervises any *attest client* implementation team

b. Makes decisions on which recommendations to prioritize or how to implement the accounting standard

c. Sets any policy or procedures related to the accounting standard

d. Accepts responsibility for designing new or redesigning existing internal controls over financial reporting

e. Designs or develops new or redesigns existing financial information systems as described in the "Information System Services" interpretation [1.295.145] under the "Independence Rule"

Effective Date

.04 This interpretation is effective December 31, 2022. Early implementation is allowed.

[See Revision History Table.]

Nonauthoritative questions and answers regarding suitable skill, knowledge, and experience are available. See Ethics Questions & Answers (Q&A) sections 210.02–.10Ethics Questions & Answers (Q&A) sections 210.02–.10 of Q&A section 210, *Nonattest Services — General Requirements*.

A nonauthoritative practice aid related to the "Information Systems Services" interpretation [1.295.145] is available at www.aicpa-cima.com/resources/download/practice-aid-independence-considerations-for-information-systems-services.

1.295.115 Benefit Plan Administration

.01 When a member provides benefit plan administration services to an *attest client*, self-review and management participation *threats* to the member's compliance with the "Independence Rule" [1.200.001] may exist.

.02 Notwithstanding the conclusions reached in paragraph .03 of this interpretation, a member should comply with the more restrictive *independence* provisions of the Employee Retirement Income Security Act (ERISA) of 1974 and DOL regulations when performing audits of employee benefit plans subject to those regulations.

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.03 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, the member may

a. communicate summary plan data to a plan trustee.

b. advise management regarding the application and impact of provisions in a plan document.

c. process certain transactions that have been initiated by plan participations or approved by the plan administrators using the member's electronic media, such as an interactive voice response system or Internet connection or other media. Such transactions may include processing investment or benefit elections, changes in contributions to the plan, data entry, participant confirmations, and distributions and *loans*.

d. prepare account valuations for plan participants using data collected through the member's electronic or other media.

e. prepare and transmit participant statements to plan participants based on data collected through the member's electronic or other media.

.04 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*, and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired* if, for example, a member

a. makes policy decisions on behalf of management.

b. interprets the provisions in a plan document for a plan participant on behalf of management without first obtaining management's concurrence.

c. makes disbursements on behalf of the plan.

d. has custody of the plan's assets.

e. serves in a fiduciary capacity, as defined by ERISA. [Prior reference: paragraph .05 of ET section 101]

1.295.120 Bookkeeping, Payroll, and Other Disbursements

.01 When a member provides bookkeeping, payroll, and other disbursement services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. record transactions to an *attest client's* general ledger when management has determined or approved the account classifications for the transaction.

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b. post transactions coded by the *attest client* to the *attest client's* general ledger.

c. prepare *financial statements* based on information in the *attest client's* trial balance.

d. post *client*-approved journal or other entries to an *attest client's* trial balance.

e. propose standard, adjusting, or correcting journal entries or other changes affecting the *financial statements* to the *attest client*. Prior to the member posting these journal entries or changes, the member should be satisfied that management has reviewed the entries and understands the nature of the proposed entries and the effect the entries will have on the *attest client's financial statements*.

f. generate unsigned checks using *source documents* or other records provided and approved by the *attest client*.

g. process an *attest client's* payroll using payroll time records that the *attest client* has provided and approved.

h. transmit *client*-approved payroll or other disbursement information to a bank or similar entity subsequent to the *attest client's* review and authorization for the member to make the transmission. Prior to such transmission, the *attest client* is responsible for making the arrangements with the bank or similar entity to limit the corresponding individual payments regarding the amount and payee. In addition, once transmitted, the *attest client* must authorize the bank or similar entity to process the payroll information.

i. prepare a reconciliation (for example, bank and accounts receivable) that identifies reconciling items for the *client's* evaluation.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member

a. determines or changes journal entries, any account coding or classification of transactions, or any other accounting records without first obtaining the *attest client's* approval.

b. authorizes or approves transactions.

c. prepares *source documents*.

d. makes changes to *source documents* without the *attest client's* approval.

e. accepts responsibility to authorize payment of *attest client* funds, electronically or otherwise, except for electronic payroll tax payments when the member complies with the requirements of the "Tax Services" interpretation [1.295.160] of the "Independence Rule."

f. accepts responsibility to sign or cosign an *attest client's* checks, even if only in emergency situations.

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g. maintains an *attest client's* bank account or otherwise has custody of an *attest client's* funds or makes credit or banking decisions for the *attest client*.

h. approves vendor invoices for payment. [Prior reference: paragraph .05 of ET section 101]

[See Revision History Table.]

Nonauthoritative questions and answers about bookkeeping services are available. See Ethics Questions & Answers section 230Ethics Questions & Answers section 230, *Nonattest Services — Bookkeeping, Payroll, and Other Disbursements*.

1.295.125 Business Risk Consulting

.01 When a member provides business risk consulting services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. assist management in its assessment of the *attest client's* business risk control processes.

b. recommend improvements to an *attest client's* business risk control processes and assists in the implementation of these improvements.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member

a. makes or approves business risk decisions.

b. presents business risk considerations to the board or others on behalf of management. [Prior reference: paragraph .05 of ET section 101]

1.295.130 Corporate Finance Consulting

.01 When a member provides corporate finance consulting services to an *attest client*, self-review, management participation, and advocacy *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

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.02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. assist management in developing its corporate strategies.

b. assist management in identifying possible sources of capital that meet the *attest client's* specifications or criteria.

c. introduce management to possible sources of capital that meet the *attest client's* specifications or criteria.

d. assist management in analyzing the effects of proposed transactions with potential buyers, sellers, or capital sources.

e. advise an *attest client* during its negotiations with potential buyers, sellers, or capital sources.

f. assist the *attest client* in drafting its offering document or memorandum.

g. participate with management in its transaction negotiations in an advisory capacity.

h. be named as a financial adviser in an *attest client's* private placement memoranda or offering documents.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member

a. commits the *attest client* to the terms of a transaction.

b. consummates a transaction on behalf of the *attest client*.

c. acts as a promoter, an underwriter, a broker-dealer, or a guarantor of an *attest client's* securities or as a distributor of private placement memoranda or offering documents.

d. maintains custody of an *attest client's* securities. [Prior reference: paragraph .05 of ET section 101]

1.295.135 Executive or Employee Recruiting

.01 When a member provides executive or employee recruiting services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. recommend a position description or candidate specifications.

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b. solicit and screen candidates based on criteria approved by the *attest client*, such as required education, skills, or experience.

c. recommend qualified candidates to the *attest client* for their consideration based on criteria approved by the *attest client*.

d. participate in employee hiring or compensation discussions in an advisory capacity.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member

a. commits the *attest client* to employee compensation or benefit arrangements.

b. hires or terminates the *attest client's* employees. [Prior reference: paragraph .05 of ET section 101]

[See Revision History Table.]

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NOTE: As of February 2025, the list of actions in paragraph .02 that ***will not*** impair independence has been updated to reflect PEEC's original intent.

December 2024

The revised interpretation "Executive or Employee Recruiting" (ET sec. 1.295.135) under the "Independence Rule" (ET sec. 1.200.001) is effective January 1, 2026, with early implementation allowed.

Executive or Employee Recruiting

.01 When a member provides executive or employee recruiting services to an *attest client*, self-review, familiarity, undue influence, and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. recommend or advise on a position description or candidate specifications.

b. advise on the general terms of employment, remuneration, or related benefits of a particular position.

c. search for or seek out candidates for non-*key positions* using the *attest client's* criteria, such as required education, skills, or experience.

d. review candidate resumes provided by the *attest client* to identify those that meet the *attest client's* criteria.

e. interview candidates and advise on a candidate's competence based on the *attest client's* criteria for any position

f. recommend to the *attest client* more than one candidate for any position for consideration based on the *attest client's* criteria, including providing analysis of how each candidate meets the *attest client's* criteria. If only one candidate for a non-*key position* meets the *attest client's* criteria, the *member* should apply the "Conceptual Framework for Independence" interpretation [1.210.010] to evaluate whether the *threats* are at an *acceptable level*.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member

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a. hires or terminates the *attest client's* employees. [Prior reference: paragraph .05 of ET section 101]

b. advises on the specific terms of employment, remuneration, or related benefits of a particular candidate for a *key position*.

c. searches for or seeks out candidates for *key positions*.

d. undertakes reference checks of prospective candidates for a *key position*.

e. recommends to the *attest client* only one candidate for consideration for a *key position*.

f. ranks candidates for a *key position* whether or not using the *attest client's* criteria.

g. negotiates with the candidate on behalf of the *attest client*.

h. commits the *attest client* to employee compensation or benefit arrangements.

[See Revision History Table.]

1.295.140 Forensic Accounting

.01 *Forensic accounting services*. For purposes of this interpretation, forensic accounting services are nonattest services that involve the application of (*a*) special skills in accounting, auditing, finance, quantitative methods or certain areas of the law, and research and (*b*) investigative skills to collect, analyze, and evaluate evidential matter and to interpret and communicate findings. Forensic accounting services consist of investigative services and litigation services.

.02 *Attest client*. For purposes of this interpretation, the term *attest client* refers to the *attest client* with respect to which the member is providing litigation services, not the law firm that engages the member on behalf of the law firm's client. If the law firm that engages the member on behalf of the member's *attest client* is also an *attest client* of the member, the member should consider the applicability of the "Cooperative Arrangements With Attest Clients" interpretation [1.265.010] of the "Independence Rule" [1.200.001].

.03 *Investigative services.* For purposes of this interpretation, investigative services include all forensic services that do not involve actual or threatened litigation, such as performing analyses or investigations that may require the same skills used in litigation services. When a member provides investigative services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. However, if the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule," *threats* will be at an *acceptable level* and *independence* will not be *impaired*.

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.04 *Litigation services*. For purposes of this interpretation, litigation services recognize the role of the member as an expert or a consultant and consist of providing assistance for actual or potential legal or regulatory proceedings before a trier of fact in connection with the resolution of disputes between parties. Litigation services consist of expert witness services, litigation consulting services, or other litigation services:

a. *Expert witness services*. For purposes of this interpretation, expert witness services are those litigation services in which a member is engaged to render an opinion before a trier of fact about the matter(s) in dispute based on the member's expertise, rather than his or her direct knowledge of the disputed facts or events:

    i. Expert witness services create the appearance that a member is advocating or promoting an *attest client's* position. Therefore, the advocacy *threat* would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, if a member is engaged conditionally or unconditionally to provide expert witness services or expert testimony for an *attest client*, *independence* would be *impaired*, except as discussed in the following item ii.

    ii. *Threats* to compliance with the "Independence Rule" [1.200.001] would be at an acceptable level, and *independence* would not be *impaired*, if a member provides expert witness services for a large group of plaintiffs or defendants that includes one or more *attest clients* of the *firm*, provided that at the outset of the engagement

        1. the member's *attest clients* constitute less than 20 percent of the members of the group, voting interests of the group, and the claim;

        2. no *attest client* within the group is designated as the lead plaintiff or defendant of the group; and

        3. no *attest client* has the sole decision-making power to select or approve the selection of the expert witness.

    iii. *Fact witness testimony*. Acting as a fact witness (also referred to as a "percipient witness" or "sensory witness") would not be considered a nonattest service. Fact witness testimony is based on the member's direct knowledge of the matters, facts, or events in dispute obtained through the member's performance of prior *professional services* for the *attest client*. As a fact witness, the member's role is to provide factual testimony to the trier of fact. While testifying as a fact witness, the trier of fact or counsel may question a member about the member's opinions pertaining to matters within the member's area of expertise. Answering such questions would not *impair* the member's *independence*.

    iv. In determining whether the member's services are considered expert witness services or fact witness testimony, members should refer to Rules 701–703 of Article VII, "Opinions and Expert Testimony," of the *Federal Rules of Evidence* and also refer to other applicable laws, regulations, and rules.

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v. When providing expert witness services or fact witness testimony, members are required to comply with the "Integrity and Objectivity Rule" [1.100.001].

b. *Litigation consulting services*. For purposes of this interpretation, litigation consulting services are those litigation services in which a member provides advice about the facts, issues, or strategy pertaining to a matter. The consultant does not testify as an expert witness before a trier of fact:

i. When a member provides litigation consulting services, advocacy and management participation *threats* to the *covered member's* compliance with the "Independence Rule" may exist. If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule," *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For purposes of complying with paragraph .01*b* of the "General Requirements for Performing Nonattest Services" interpretation of the "Independence Rule," the *attest client* may designate its attorney to oversee the litigation consulting services.

ii. However, if the member providing litigation consulting services subsequently agrees to serve as an expert witness, *threats* to the member's compliance with the "Independence Rule" would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*. Accordingly, *independence* would be *impaired*.

c. *Other litigation services*. The advocacy *threat* would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards* if a member serves as a trier of fact, a special master, a court-appointed expert, or an arbitrator (including serving on an arbitration panel) in a matter involving an *attest client*. These services create the appearance that the member is not independent; accordingly, *independence* would be *impaired*.

d. However, if the member applies the "General Requirements for Performing Nonattest Services" interpretation of the "Independence Rule," *threats* would be at an *acceptable level* and *independence* would not be *impaired* when a member serves as a mediator or any similar role in a matter involving an *attest client*, provided that the member is not making any decisions on behalf of the parties but, rather, is acting as a facilitator by assisting the parties in reaching their own agreement. When providing such services, the member should consider the requirements of the "Conflicts of Interest" interpretation [1.110.010] of the "Integrity and Objectivity Rule." [Prior reference: paragraph .05 of ET section 101]

.05 See www.aicpa-cima.com/resources/download/transition-provisions for information about transition provision for engagements commenced prior to February 28, 2007.

.06 When providing any type of forensic accounting service, members are required to comply with the "Integrity and Objectivity Rule" [1.100.001].

[See Revision History Table.]

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1.295.143 Hosting Services

.01 For purpose of this interpretation, hosting services are nonattest services that involve a member accepting responsibility for the following:

a. Acting as the sole host of a financial or non-financial information system of an *attest client*

b. Taking custody of or storing an *attest client's* data or records whereby, that data or records are available only to the *attest client* from the member, such that the *attest client's* data or records are otherwise incomplete

c. Providing electronic security or back-up services for an *attest client's* data or records

.02 When a member provides hosting services, the member is maintaining the *attest client's* internal control over its data or records. Accordingly, the management participation *threat* to the member's compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*, and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*.

.03 Examples of activities that are considered hosting services, and as such will *impair independence* if performed for an *attest client*, include accepting responsibility for the following:

a. Housing the *attest client's* website or other non-financial information system

b. Keeping the *attest client's* data or records on the *attest client's* behalf, for example, the *attest client's* general ledger information, supporting schedules (such as, depreciation or amortization schedules), lease agreements or other legal documents are stored on the member's *firm's* servers or servers licensed by the member's *firm* or the member is responsible for storing hard copy versions of the data or records

c. Being the *attest client's* business continuity or disaster recovery provider

.04 Examples of activities that are not considered to be hosting services, and as such will not *impair independence* provided members comply with the requirements of the other *interpretations* of the "Nonattest Services" subtopic include these:

a. Retaining a copy of an *attest client's* data or records as documentation to support a service the member provided to the *attest client*. Some examples are as follows:

    i. The payroll data that support a payroll tax return prepared by the member for the *attest client*

    ii. A bank reconciliation that supports attest procedures performed by the member on the *attest client's* cash account

    iii. The *attest client's* vendor data used to prepare an analysis of vendor activity

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b. Retaining, for a member's records, a copy of a work product prepared by the member (for example, a tax return).

c. Using general ledger software to facilitate the delivery of bookkeeping services when either of the following occurs:

   i. The member and the *attest client* maintain separate instances of the software on their respective servers, and the member provides updated financial information electronically to the *attest client*.

   ii. The *attest client* enters into an agreement with a *third-party service provider* to maintain its software in a cloud-based solution and grants the member access to the software so that the member can perform the bookkeeping service for the *attest client*.

d. Retaining data collected by the member related to a work product that the member prepared for an *attest client*. For example, the member conducts an employee survey and provides the *attest client* with a report. The member retains the survey data collected to support the work product.

e. Electronically exchanging data, records, or the member's work product with an *attest client* or on behalf of an *attest client* at the *attest client's* request. For example, the member uses a portal as follows:

   i. To exchange data and records with the *attest client* related to *professional services* provided by the member to the *attest client*

   ii. To deliver the member's work product to third parties at the *attest client's* request

   To avoid providing hosting services, members should terminate the *attest client's* access to the data or records in the portal within a reasonable period of time after the conclusion of the engagement.

f. Licensing software to an *attest client* that the *attest client* uses to input its data and receive an output that the *attest client* is responsible for maintaining, provided the software does not perform an activity that, if performed directly by the member, would *impair independence*.

g. Having possession of a depreciation schedule prepared by the member, provided the deprecation schedule and calculation are given to the *attest client* so that *attest client's* books and records are complete.

h. Retaining an *attest client's* original data or records to facilitate the performance of a nonattest service (for example, obtaining original records to prepare the attest client's tax return), provided that the data or records are returned to the *attest client* at the end of the engagement or, in a multi-year engagement, at least annually. This does not apply to ongoing hosting services as described in paragraph .01 of this interpretation.

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Effective Date

.05 This interpretation is effective July 1, 2019.

[See Revision History Table.]

Nonauthoritative questions and answers regarding hosting services are available. See Ethics Questions & Answers section 240Ethics Questions & Answers section 240, *Nonattest Services — Hosting Services*.

1.295.145 Information Systems Services

Introduction

.01 Self-review and management participation *threats* to the member's compliance with the "Independence Rule" [1.200.001] may exist when a member provides nonattest services related to an *attest client's* information systems.

.02 This interpretation applies to all attest engagements, including those in which the subject matter of the engagement is not financial statements. In these cases, the member should define a financial information system as any information system that is subject to the member's attest procedures considering the relevant factors in paragraph .03a.

Terminology

.03 The following terms are defined solely for the purpose of applying this interpretation:

a. A financial information system (FIS) is a system that aggregates source data underlying the *financial statements* or generates information that is significant to either the financial statements or financial processes as a whole. An FIS includes a tool that calculates results unless

   i. the tool performs only discrete calculations;

   ii. the *attest client* evaluates and accepts responsibility for the input and assumptions; and

   iii. the *attest client* has sufficient information to understand the calculation and the results.

b. Designing an information system means determining how a system or transaction will function, process data, and produce results (for example, reports, journal vouchers, and documents such as sales and purchase orders) to provide a blueprint or schematic for the development of software code (programs) and data structures.

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c. Developing an information system entails creating software code, for individual or multiple modules, and testing such code to confirm it is functioning as designed.

d. Commercial off-the-shelf (COTS) refers to software developed, distributed, maintained, and supported by an entity or entities that are not the *member* or *member'sfirm* (a third-party vendor), sometimes referred to as an "off-the-shelf" package or solution. COTS solutions have generally referred to traditional on-premise software that runs on a customer's own computers or on a third-party vendor's "cloud" infrastructure. COTS solutions range from software packages that require only installation on a computer and are ready to run to large-scale, complex enterprise applications.

Design, Development, or Implementation Services Not Related to an FIS

.04 When performing design, development, or implementation services described in this interpretation for an *attest client* that are not related to an FIS, *threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* provided all requirements of the "Nonattest Services" subtopic [1.295] of the "Independence Rule" are met, including that the *attest client* has not outsourced a function, process, or activity to the member, which would result in the member assuming a management responsibility.

Design or Develop an FIS

.05 When a member designs or develops an *attest client's* FIS, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an acceptable level by the application of *safeguards* and *independence* would be *impaired*.

.06 To determine whether a nonattest service is related to an FIS, members should consider all relevant factors, such as whether the nonattest service will affect the following:

a. System controls or system output that will be subject to attest procedures.

b. A system that generates data that are used as input to the financial statements, including data or information that is either reflected in or used in determining amounts and disclosures included in the financial statements.

c. A data-gathering system, such as an analytical or reporting tool, that is used in management's decision-making about matters that could significantly affect financial reporting.

d. A system that is part of the *attest client's* internal controls over financial reporting, including information systems used to effect internal controls over financial reporting (for example, a system used to ensure that information produced for the financial statements is accurate). However, information systems used only in connection with controlling the efficiency and effectiveness of operations are considered unrelated to the financial statements and accounting records.

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Implement a COTS FIS Software Solution

.07 Implementation services involve activities related to an *attest client's* information systems after the design and development of the system. Implementation ceases when the system is available on a regular basis to the *attest client* for its intended use. For example, implementation services can include activities such as installing, configuring, interfacing, customizing, and data translation. Services that are performed post-implementation, such as the maintenance, support, and monitoring of the system, are not implementation services.

.08 *Threats* created by certain COTS implementation services related to the *attest client's* FIS may be reduced to an *acceptable level* by the application of *safeguards*; however, in other situations, *threats* to compliance with the "Independence Rule" [1.200.001] would be significant and could not be reduced to an *acceptable level* by the application of *safeguards*. These situations are addressed in paragraphs .09–.20 of this interpretation.

Install a COTS FIS Software Solution

.09 To install a COTS FIS software solution means the initial loading of software on the *client's* designated hosting site. Software configuration, interfacing, customizing and data translation activities may follow installation.

.10 When a member installs a COTS FIS software solution, *threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level*, provided all requirements of the "Nonattest Services" subtopic [1.295] of the "Independence Rule" are met.

Configure a COTS FIS Software Solution

.11 To configure a COTS FIS software solution means inputting the *client*-selected features, functionality options, and settings within the third-party vendor's software, which determines how the software will perform certain transactions and process data. Configuration options may also include selecting the predefined format of certain data attributes and the inclusion or exclusion of such attributes. However, if the member were to design or develop new software code or features to modify or alter the functionality of the COTS software solution in ways not predefined by the third-party vendor, this would be considered designing or developing activities, as described in items (*b*)–(*c*) of paragraph .03.

.12 When a member configures a COTS FIS software solution based on *client*-selected features, functionality options, and settings within the third-party vendor's software, *threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* provided all requirements of the "Nonattest Services" subtopic [1.295] of the "Independence Rule" are met.

Customize a COTS FIS Software Solution

.13 To customize a COTS FIS software solution means to modify or enhance the features and functions in ways that go beyond the options provided by the third-party vendor when configuring the COTS software solution.

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a. Modification involves altering the COTS software solution code to change or add to the functionality provided by the third-party vendor.

b. Enhancements involve developing new code, external to the COTS software solution, that works in concert with the COTS software solution to provide altered or additional functionality.

.14 If a member customizes an *attest client's* COTS FIS software solution, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an acceptable level by the application of *safeguards*; *independence* would be *impaired*.

Interface a COTS FIS Software Solution

.15 Providing interface services for a COTS FIS software solution means connecting two or more systems by designing and developing software code that passes data from one system to another. Interfaces may flow in one direction or be bidirectional. Interfaces may involve the performance of an end-to-end transaction or they may pass data from one system to another.

.16 If a member provides interface services for a COTS FIS software solution, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an acceptable level by the application of *safeguards*; *independence* would be *impaired* except as provided for in paragraph .17.

.17 If a member uses a third-party vendor's application, such as an application programming interface (API), to interface legacy or COTS FIS software solutions, *threats* to *independence* would be at an *acceptable level*, provided the member will not be designing or developing code for the application to work and all requirements of the "Nonattest Services" subtopic [1.295] of the "Independence Rule" [1.200.001] are met.

Data Translation Services Related to a COTS FIS Software Solution

.18 Performing data translation services for a COTS FIS software solution involves designing and developing the rules or logic necessary to convert legacy system data to a format compatible with that of the new system.

.19 If a member performs data translation services for a COTS FIS software solution, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an acceptable level by the application of *safeguards* and *independence* would be *impaired* except as provided for in paragraph .20.

.20 If a member uses a third-party vendor's application, such as an API, to perform data translation services for a COTS FIS software solution, *threats* to *independence* would be at an *acceptable level*, provided the member will not be designing or developing code for the application to work and all requirements of the "Nonattest Services" subtopic [1.295] of the "Independence Rule" [1.200.001] are met.

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System and Network Maintenance, Support, and Monitoring

.21 Maintenance, support, and monitoring services are activities that are provided after a financial or nonfinancial system or network is implemented. If post-implementation services involve the *attest client* outsourcing an ongoing function, process, or activity to the member that would result in the member assuming a management responsibility, compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an acceptable level by the application of *safeguards* and *independence* would be *impaired*. Examples of services that involve an ongoing function, process, or activity that would result in the member assuming a management responsibility include services in which the member directly or indirectly does any of the following:

a. Operates the *attest client's* network, such as managing the *attest client's* systems or software applications

b. Supervises *client* personnel involved in the operation of the *attest client's* information systems

c. Has responsibility for monitoring or maintaining the *attest client's* network performance

d. Operates or manages the *attest client's* information technology help desk

e. Has responsibility to perform ongoing network maintenance, such as updating virus protection solutions, applying routine updates and patches, or configuring user settings

f. Has responsibility for maintaining the security of the *attest client's* networks and systems

.22 *Independence* will not be *impaired* provided all requirements of the "Nonattest Services" subtopic [1.295] of the "Independence Rule" [1.200.001] are met and the maintenance, support, or monitoring services are individually separate, distinct, and not ongoing engagements in which the *attest client* has outsourced no function, process, or activity to the member that would result in the member assuming a management responsibility. Examples of services that would not impair independence may include any of the following services:

a. Analyzing a network and providing observations or recommendations

b. Applying virus protection solutions or updates that the member did not design or develop

c. Applying certain updates and patches that the member did not design or develop

d. Providing advice, training, or instruction on a software solution

e. Assessing the design or operating effectiveness of an *attest client's* security over information technology systems

f. Assessing the *attest client's* information technology security policies or practices

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A nonauthoritative practice aid is available at www.aicpa-cima.com/resources/download/practice-aid-independence-considerations-for-information-systems-services.

Nonauthoritative questions and answers regarding information systems design, implementation, and integration services are available. See Ethics Questions & Answers section 250Ethics Questions & Answers section 250, *Nonattest Services — Information Systems Services*.

1.295.150 Internal Audit

.01 For purposes of this interpretation, internal audit services involve assisting the *attest client* in the performance of its internal audit activities, sometimes referred to as "internal audit outsourcing." When a member provides internal audit services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 The *attest client's* management is responsible for directing the internal audit function, including the management thereof. Such responsibilities include, but are not limited to, designing, implementing and maintaining internal control. *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*, cannot be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired* if the *attest client* outsources the internal audit function to the member, whereby the member, in effect, manages the *attest client's* internal audit activities.

.03 However, except for the outsourcing services discussed in paragraph .02, *threats* to compliance with the "Independence Rule" [1.200.001] would be at an *acceptable level* and *independence* would not be *impaired* if the member assists the *attest client* in performing financial and operational internal audit activities, provided that, in addition to the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule," the member is satisfied that management

a. designates an individual or individuals who possess suitable skill, knowledge, and experience, preferably within senior management, to be responsible for the internal audit function.

b. determines the scope, risk, and frequency of internal audit activities, including those the member will perform in providing the services.

c. evaluates the findings and results arising from the internal audit activities, including those the member will perform in providing the services.

d. evaluates the adequacy of the audit procedures performed and the findings resulting from the performance of those procedures.

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.04 For example, if the member applies the *safeguards* in paragraph .03, the member may assess whether performance is in compliance with management's policies and procedures, identify opportunities for improvement, and recommend improvement or further action for management consideration and decision making.

.05 The member may assist the individual responsible for the internal audit function in performing preliminary audit risk assessments, preparing audit plans, and recommending audit priorities. The member should also be satisfied that *those charged with governance* are informed about the member's and management's respective roles and responsibilities in connection with the engagement. Such information should provide *those charged with governance* a basis for developing guidelines for management and the member to follow in carrying out these responsibilities and monitoring how well the respective responsibilities have been met.

.06 *Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, in addition to those activities listed in the "Management Responsibilities" interpretation [1.295.030] of the "Independence Rule," a member

a. performs ongoing evaluations (see paragraph .10 that follows) or control activities (for example, reviewing *loan* originations as part of the *attest client's* approval process or reviewing customer credit information as part of the customer's sales authorization process) that affect the execution of transactions or ensure that transactions are properly executed or accounted for, or both, and performs routine activities in connection with the *attest client's* operating or production processes that are equivalent to those of an ongoing compliance or quality control function.

b. performs separate evaluations on the effectiveness of a significant control such that the member is, in effect, performing routine operations that are built into the *attest client's* business process.

c. has *attest client* management rely on the member's work as the primary basis for the *attest client's* assertions on the design or operating effectiveness of internal controls.

d. determines which, if any, recommendations for improving the internal control system should be implemented.

e. reports to the board of directors or audit committee on behalf of management or the individual responsible for the internal audit function.

f. approves or is responsible for the overall internal audit work plan, including the determination of the internal audit risk and scope, project priorities, and frequency of performance of audit procedures.

g. is connected with the *attest client* as an employee or in any capacity equivalent to a member of management (for example, being listed as an employee in the *attest client's* directories or other *attest client* publications, permitting himself or herself to be referred to by title or description as supervising or being in charge of the

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attest client's internal audit function, or using the *attest client's* letterhead or internal correspondence forms in communications).

.07 *Monitoring activities.* Designing, implementing, or maintaining the *attest client's* monitoring activities are management responsibilities. Accordingly, *independence* would be *impaired* if a member accepts responsibility for performing such activities. Monitoring activities are procedures performed to assess whether components of internal control are present and functioning. Monitoring can be done through ongoing evaluations, separate evaluations, or some combination of the two. Ongoing evaluations are generally defined, routine operations built in to the *attest client's* business processes and performed on a real-time basis. Ongoing evaluations, including managerial activities and everyday supervision of employees, monitor the presence and functioning of the components of internal control in the ordinary course of managing the business. A member who performs such activities for an *attest client* would be considered to be accepting responsibility for maintaining the *attest client's* internal control. Accordingly, the management participation *threat* created by a member performing ongoing evaluations is so significant that no *safeguards* could reduce the *threat* to an *acceptable level*, and thus *independence* would be *impaired*.

.08 Separate evaluations are conducted periodically and generally not ingrained within the business but can be useful in taking a fresh look at whether internal controls are present and functioning. Such evaluations include observations, inquiries, reviews, and other examinations, as appropriate, to ascertain whether controls are designed, implemented, and conducted. The scope and frequency of separate evaluations is a matter of judgment and vary depending on assessment of risks, effectiveness of ongoing evaluations, and other considerations. Because separate evaluations are not built into the *attest client's* business process, separate evaluations generally do not create a significant management participation *threat* to *independence*.

.09 Members should refer to the Committee of Sponsoring Organizations of the Treadway Commission's (COSO's) *Internal Control—Integrated Framework*, for additional guidance on monitoring activities and distinguishing between ongoing and separate evaluations.

.10 Members should use judgment in determining whether otherwise permitted internal audit services performed may result in a significant management participation *threat* to *independence*, considering factors such as the significance of the controls being tested, the scope or extent of the controls being tested in relation to the overall *financial statements* of the *attest client*, as well as the frequency of the internal audit services. If the *threat* to *independence* is considered significant, the member should apply *safeguards* to eliminate or reduce the *threat* to an *acceptable level*. If no *safeguards* could reduce the *threat* to an *acceptable level*, then *independence* would be *impaired*.

.11 *Attest-related services.* Services considered extensions of the member's audit scope applied in the audit of the *attest client's financial statements*, such as confirming accounts receivable and analyzing fluctuations in account balances, are not considered internal audit services and would not be subject to this interpretation even if the extent of such testing exceeds that required by generally accepted auditing standards (GAAS). In addition, engagements performed under the attestation standards would not be considered internal audit services and, therefore, would not *impair independence*.

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.12 When a member performs internal audit services that would not *impair independence* under this interpretation and is subsequently engaged to perform an attestation engagement to report on management's assertion regarding the effectiveness of its internal control, *independence* would not be considered *impaired*, provided the member is satisfied that *attest client* management does not rely on the member's work as the primary basis for its assertion. [Prior reference: paragraph .05 of ET section 101]

[See Revision History Table.]

1.295.155 Investment Advisory or Management

.01 When a member provides investment advisory or management services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.

.02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may

a. recommend the *attest client's* allocation of funds among various investments or asset classes based upon the *attest client's* desired rate of return, risk tolerance, or other parameters.

b. perform recordkeeping and reporting of the *attest client's* portfolio balances, including providing the *attest client* with a comparative analysis of the *attest client's* investments to third-party benchmarks.

c. evaluate the manner in which an *attest client's* portfolio is being managed by investment account managers, including assessing whether the managers are

    i. following the guidelines of the *attest client's* investment policy statement.

    ii. meeting the *attest client's* investment objectives.

    iii. conforming to the *attest client's* stated investment parameters or risk tolerance.

d. transmit an *attest client's* investment selection, with the *attest client's* consent, to the *attest client's* broker-dealer or equivalent, provided that the *attest client* has authorized the broker-dealer or equivalent to execute the transaction.

.03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member

a. makes investment decisions on behalf of management or otherwise has discretionary authority over an *attest client's* investments.

b. executes a transaction to buy or sell an *attest client's* investments.

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c. has custody of an *attest client's* assets, such as taking temporary possession of securities purchased by an *attest client*. [Prior reference: paragraph .05 of ET section 101]

1.295.160 Tax Services

.01 For purposes of this interpretation, tax services include preparation of a tax return, transmittal of a tax return, and transmittal of any related tax payment to the taxing authority, signing and filing a tax return, having a power of attorney limited strictly to tax matters; and authorized representation of *attest clients* in administrative proceedings before a taxing authority.

.02 For purposes of this interpretation, a tax return includes all tax filings, including informational tax forms (such as estimated tax vouchers), extension forms, and Forms 990, 5500, 1099, and W-2, filed with a taxing authority or other regulatory agency.

.03 *Preparation and transmittal.* When a member prepares a tax return and transmits the tax return and related tax payment to a taxing authority in paper or electronic form, self-review and management participation *threats* to the member's compliance with the "Independence Rule" [1.200.001] may exist. If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule," *threats* would be at an *acceptable level* and *independence* would not be *impaired*, provided that the member does not have custody or control over the *attest client's* funds or assets and the individual designated by the *attest client* to oversee the tax services

a. reviews and approves the tax return and related tax payment.

b. if required for filing, signs the tax return prior to the member transmitting the return to the taxing authority.

The following are not considered having custody or control over an *attest client's* funds: making electronic tax payments authorized by an *attest client* pursuant to a taxing authority's prescribed criteria (as discussed in paragraph .04), affixing the *attest client's* depository account information on a tax return, or remitting an *attest client's* check made payable to the taxing authority.

.04 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired* when a member signs and files a tax return on behalf of management, provided that the member has the legal authority to do so and

a. the taxing authority has prescribed procedures in place for an *attest client* to permit a member to sign and file a tax return on behalf of the *attest client* (for example, Forms 8879 or 8453), and such procedures meet, at the minimum, standards for electronic return originators and officers outlined in Form 8879, or

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b. an individual in management who is authorized to sign and file the *attest client's* tax return provides the member with a signed statement that clearly identifies the return being filed and represents that such individual

   i. is authorized to sign and file the tax return.

   ii. has reviewed the tax return, including accompanying schedules and statements, and it is true, correct, and complete to the best of the individual's knowledge and belief.

   iii. authorizes the *member* or another named individual in the *member's firm* to sign and file the tax return on the *attest client* behalf.

.05 *Authorized representation in administrative proceedings.* If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired* if a member acts as the *attest client's* authorized representative in administrative proceedings before a taxing authority, provided that the member obtains the *attest client's* agreement prior to committing the *attest client* to a specific resolution with the taxing authority. [Prior reference: paragraph .05 of ET section 101]

.06 *Power of attorney.* When a member has an *attest client's* power of attorney, the self-review, management participation, and advocacy *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist. If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule," *threats* would be at an *acceptable level* and *independence* would not be *impaired*, provided that the member's use of the power of attorney is limited strictly to tax matters and the member does not bind the *attest client* to any agreement with a taxing authority or other regulatory agency. [No prior reference: new content]

.07 *Representation in court. Threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level*, and could not be reduced to an *acceptable level* through the application of *safeguards*, and *independence* would be *impaired* if a member represents an *attest client* in court to resolve a tax dispute. For purposes of this interpretation, court encompasses a tax, district, or federal court of claims and the equivalent state, local, or foreign forums. [Prior reference: paragraph .05 of ET section 101]

.08 For information about transition provision for engagements commenced prior to February 28, 2007, see www.aicpa-cima.com/resources/download/transition-provisions.

Effective Date

.09 Paragraph .06 of this interpretation is effective December 15, 2014.

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A nonauthoritative basis-for-conclusions document that summarizes considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Revisions to Interpretations and Rulings Under Rule 101 — IndependenceBackground and Basis for Conclusions: Revisions to Interpretations and Rulings Under Rule 101 — Independence" in *Basis for Conclusions Documents*.

In addition, nonauthoritative questions and answers regarding performance tax services are available. See Ethics Questions & Answers section 280Ethics Questions & Answers section 280, *Nonattest Services — Tax Services*.

1.297 Independence Standards for Engagements Performed in Accordance With Statements on Standards for Attestation Engagements

1.297.010 Application of the Independence Rule to Engagements Performed in Accordance With Statements on Standards for Attestation Engagements

.01 The "Independence Rule" [1.200.001] and its *interpretations* apply to all *attest engagements*. However, when performing engagements to issue reports in accordance with Statements on Standards for Attestation Engagements (SSAEs), when *independence* is required or when the *member's* compilation report does not disclose a lack of *independence*, the *covered member* needs to be independent with respect to the responsible party(ies), as defined in the SSAEs.

.02 If the individual or entity that engages the *covered member* (engaging entity) is not the responsible party, the *covered member* need not be independent of that engaging entity. However, because *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] and the "Conflicts of Interest" interpretation [1.110.010] may still exist with respect to the engaging entity, *members* should comply with this rule and interpretation.

.03 In addition, application of the "Independence Rule" [1.200.001] is further modified as set forth in the "Agreed-Upon Procedures Engagements in Accordance With SSAEs" interpretation [1.297.020] and the "Engagements, Other Than AUPs, Performed in Accordance With SSAEs" interpretation [1.297.030] of the "Independence Rule." [Prior reference: paragraph .13 of ET section 101]

[See Revision History Table.]

1.297.020 Agreed-Upon Procedure Engagements Performed in Accordance With SSAEs

.01 For purposes of this interpretation, subject matter is as defined in the SSAEs.

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.02 When performing agreed-upon procedures (AUP) engagements in accordance with the SSAEs, the application of the "Independence Rule" [1.200.001] is modified, as described in the "Application of the Independence Rule to Engagements Performed in Accordance With Statements on Standards for Attestation Engagements" interpretation [1.297.010] of the "Independence Rule" and this interpretation.

.03 When providing nonattest services that would otherwise *impair independence* under the *interpretations* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*, provided that the nonattest services do not relate to the specific subject matter of the SSAE engagement. *Threats* would be at an *acceptable level* and *independence* would also not be *impaired* if the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" were not applied when providing the nonattest services, provided that the nonattest services do not relate to the specific subject matter of the AUP engagement.

.04 When a *member* or *member's firm* enters into a staff augmentation arrangement as described in paragraph .01 of the "Staff Augmentation Arrangements" interpretation [1.275.007], *threats* would be at an *acceptable level* and *independence* would not be *impaired* provided that the services performed by the augmented staff are unrelated to the specific subject matter of the AUP engagement.

.05 In addition, when performing an AUP engagement under the SSAEs, *threats* would be at an *acceptable level* and *independence* would not be *impaired*, if the following *covered members* and their *immediate families* are independent of the responsible party(ies):

a. Individuals participating on the AUP engagement team

b. Individuals who directly supervise or manage the AUP engagement *partner* or *partner equivalent*

c. Individuals who consult with the *attest engagement team* regarding technical or industry-related issues specific to the AUP engagement

.06 Furthermore, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if the *firm* had a material financial relationship with the responsible party(ies) that was covered by any of the following interpretations of the "Independence Rule":

a. Paragraphs .01–.02 of "Overview of Financial Interests" [1.240.010]

b. "Trustee or Executor" [1.245.010]

c. "Joint Closely Held Investments" [1.265.020]

d. "Loans" [1.260.010] [Prior reference: paragraph .13 of ET section 101]

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Effective Date

.07 The addition of *partner equivalents* to paragraph .05 is effective for engagements covering periods beginning on or after December 15, 2014.

[See Revision History Table.]

1.297.030 Engagements, Other Than AUPs, Performed in Accordance With SSAEs

.01 For purposes of this interpretation, subject matter is as defined in the SSAEs.

.02 When performing an engagement, other than an AUP, in accordance with the SSAEs, the application of the "Independence Rule" [1.200.001] is modified, as described in the "Application of the Independence Rule to Engagements Performed in Accordance With Statements on Standards for Attestation Engagements" interpretation [1.297.010] of the "Independence Rule" and this interpretation.

.03 When providing nonattest services that would otherwise *impair independence* under the *interpretations* of the "Nonattest Services" subtopic [1.295], *threats* would be at an *acceptable level* and *independence* would not be *impaired* if the following *safeguards* are met:

a. Nonattest services do not relate to the specific subject matter of the SSAE engagement.

b. The "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001] are met when providing the nonattest service. [Prior reference: paragraph .13 of ET section 101]

1.298 Breach of an Independence Interpretation

1.298.010 Breach of an Independence Interpretation

Introduction

.01 AICPA bylaws require *members* to comply with the "Independence Rule" [1.200.001]. This interpretation provides guidance to assist *members* in evaluating and addressing the consequences of a breach of an *independence interpretation* and the effect on the *attest engagement team's* integrity, objectivity, and professional skepticism so the *member* or *member's firm* can determine if the consequences of a breach can be satisfactorily addressed. This interpretation also provides specific steps and actions the *member* should take when the *member* becomes aware that a breach of an *independence interpretation* has occurred. However, a *member's* determination that the consequences of a breach of an *independence interpretation* have been satisfactorily addressed will not preclude an investigation or enforcement action. In any case, the *member* should be prepared to justify such determination.

Required Policies and Procedures Established by the Firm

.02 In order for the consequences of an *independence* breach to be addressed by a *member* or the *member's firm* pursuant to the provisions of this interpretation, the *firm*

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must be compliant with QM section 10A, *A Firm's System of Quality Control*, which requires the *member's firm* to have established policies and procedures designed to provide it with reasonable assurance that the *firm*, its personnel, and, when applicable, others subject to *independence* requirements, maintain *independence* when required. The policies and procedures should enable the *firm* to communicate its *independence* requirements to its personnel and, when applicable, others subject to them; to identify and evaluate circumstances and relationships that create *threats* to *independence*; and to take appropriate action to eliminate those *threats* or reduce them to an *acceptable level* by applying *safeguards* or, if effective *safeguards* cannot be applied, withdrawing from the engagement. These policies and procedures should be designed to provide the *firm* with reasonable assurance that it is notified of breaches of *independence* requirements and to enable it to take appropriate actions to resolve such situations.

Breaches Resulting in Significant Threats

.03 In situations in which a *partner* or professional employee of the *firm* breaches an *independence interpretation* and the *threat* to *independence* resulting from the breach is significant such that the *attest engagement team's* integrity, objectivity, and professional skepticism are compromised, the provisions of this interpretation could not address the consequences of the breach as no actions could be taken to satisfactorily address the consequences of the breach.

.04 In situations in which the lead *attest engagementpartner* or an *individual in a position to influence the attest engagement* either (1) committed the breach or (2) knows of a breach and fails to ensure the breach is promptly communicated to or known by an appropriate individual within the firm as described in this interpretation, there is a rebuttable presumption the provisions of this interpretation would not be able to address the breach as the *threats* to the *attest engagement team's* integrity, objectivity, and professional skepticism and the *threats* to the appearance of *independence* would be considered so significant that no actions could be taken to satisfactorily address the consequences of the breach.

Identifying and Communicating a Breach

.05 When a breach is identified, the *member* should, in accordance with his or her *firm's* policies and procedures, promptly communicate the breach to an appropriate individual within the *firm*, for example, an individual or individuals with responsibility for the policies and procedures relating to *independence*, or the *attest engagement partner* (the responsible individual).

.06 The responsible individual should report the breach to those who need to take appropriate action and, when appropriate, should report the breach to relevant *network firms*. The responsible individual should be satisfied that the interest or relationship that caused the breach has been terminated, suspended, or eliminated and should address the consequences of the breach. A consequence of a breach may be that termination of the *attest engagement* is necessary.

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Evaluating the Significance of a Breach

.07 The responsible individual should evaluate the significance of the breach and its effect on the *attest engagement team's* integrity, objectivity, and professional skepticism and the ability to issue an attest report. The significance of the breach will depend on factors such as the following:

a. The nature and duration of the breach

b. The number and nature of any previous breaches with respect to the current *attest engagement*

c. Whether a *member* of the *attest engagement team* had knowledge of the interest or relationship that caused the breach

d. Whether the individual who caused the breach is a *member* of the *attest engagement team* or another individual for whom there are *independence* requirements

e. The role of the individual if the breach relates to a *member* of the *attest engagement team*

f. The effect of the service, if any, on the accounting records or the *attest client's financial statements* if the breach was caused by the provision of a *professional service*

g. Whether a *partner* or *partner equivalent* of the *firm* had knowledge of the breach and failed to ensure that the breach was promptly communicated to an appropriate individual within the *firm*

h. Whether the breach involved solely an *affiliate* of a *financial statement attest client* and if so, the nature of the *affiliate* relationship

i. The extent of the self-interest, advocacy, undue influence, or other *threats* created by the breach

Addressing the Consequences of a Breach

.08 Depending upon the significance of the breach, it may be necessary to terminate the *attest engagement* or it may be possible to take action that satisfactorily addresses the consequences of the breach. Certain breaches described in this interpretation cannot be addressed by the provisions of this interpretation. For all other breaches, the responsible individual should determine whether satisfactory action can be taken and is appropriate in the circumstances. In making this determination, the responsible individual should exercise professional judgment and take into account whether a reasonable and informed third party, weighing the significance of the breach, the action to be taken, and all the specific facts and circumstances available to the *member* at that time, would likely conclude that the *attest engagement team's* integrity, objectivity, and professional skepticism would be compromised and therefore whether *independence* is *impaired*.

.09 Examples of actions that the responsible individual may consider include the following:

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a. Removing the relevant individual from the *attest engagement team*

b. Conducting an additional review of the affected attest work or re-performing that work to the extent necessary; in either case, using different personnel

c. Recommending that the *attest client* engage another *firm* to review or re-perform the affected attest work to the extent necessary

d. Engaging another *firm* to evaluate the results of the nonattest service or having another firm re-perform the nonattest service to the extent necessary to enable it to take responsibility for the service if the breach relates to a nonattest service that affects the accounting records or an amount that is recorded in the *financial statements*

Communicating With Those Charged With Governance at the Attest Client

.10 If the responsible individual determines that action cannot be taken to satisfactorily address the consequences of the breach, the responsible individual should inform *those charged with governance* as soon as practicable and take the steps necessary to terminate the *attest engagement* in compliance with any applicable legal or regulatory requirements relevant to terminating the *attest engagement*. Where termination is not permitted by law or regulation, the responsible individual should comply with any reporting or disclosure requirements.

.11 If the responsible individual determines that action can be taken to satisfactorily address the consequences of the breach, the responsible individual should discuss the breach and the action taken or proposed to be taken with *those charged with governance* as soon as practicable, unless *those charged with governance* have specified an alternative timing for reporting less significant breaches. The matters to be discussed should include the following:

a. The significance of the breach, including its nature and duration

b. How the breach occurred and how it was identified

c. The action taken or proposed to be taken and the responsible individual's rationale for how the action will satisfactorily address the consequences of the breach and enable the *firm* to issue the attest report

d. The conclusion that, in the responsible individual's professional judgment, the integrity, objectivity, and professional skepticism of the *attest engagement team* has not been compromised and the rationale for that conclusion

e. Any steps that the responsible individual has taken or proposes to take to reduce or avoid the risk of further breaches occurring

.12 The responsible individual should communicate in writing with *those charged with governance* all matters discussed in accordance with the paragraph above and obtain the concurrence of *those charged with governance* that action can be, or has been, taken to satisfactorily address the consequences of the breach. The communication shall include a

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description of the *firm's* policies and procedures relevant to the breach designed to provide it with reasonable assurance that *independence* is maintained and any steps that the *firm* has taken, or proposes to take, to reduce or avoid the risk of further breaches occurring. If *those charged with governance* do not concur that the action satisfactorily addresses the consequences of the breach, the responsible individual should take the steps necessary to terminate the *attest engagement*, where permitted by law or regulation, in compliance with any applicable legal or regulatory requirements relevant to terminating the *attest engagement*. Where termination is not permitted by law or regulation, the responsible individual should comply with any reporting or disclosure requirements.

Breaches Relating to Previously Issued Reports

.13 If the breach occurred prior to the issuance of the previous attest report, the responsible individual should comply with this section in evaluating the significance of the breach and its effect on the *attest engagement team's* objectivity, integrity, and professional skepticism and its ability to issue an attest report in the current period. The responsible individual should also consider the effect of the breach, if any, on the *attest engagement team's* integrity, objectivity, and professional skepticism in relation to any previously issued attest reports, and the possibility of withdrawing such attest reports in accordance with professional standards, and discuss the matter with *those charged with governance*.

Documentation

.14 The responsible individual should document the breach, the action taken, key decisions made and all the matters discussed with *those charged with governance* and any discussions with a professional body, relevant regulator, or oversight authority. When the *firm* continues with the *attest engagement*, the matters to be documented should also include the conclusion that, in the responsible individual's professional judgment, the integrity, objectivity, and professional skepticism of the *attest engagement team* have not been compromised and the rationale for why the action taken satisfactorily addressed the consequences of the breach such that the *firm* could issue an attest report. Failure to prepare the required documentation does not *impair independence* provided the *member* can demonstrate the *member* satisfactorily addressed the consequences of the breach and discussed the breach, the action taken, and key decisions made with *those charged with governance*, and as applicable, a professional body, relevant regulator, or oversight authority. However, failure to prepare the required documentation would be considered a violation of the "Compliance With Standards Rule" [1.310.001].

.15 Refer to the "Unsolicited Financial Interests" interpretation [1.240.020] of the "Independence Rule" [1.200.001] for guidance on unsolicited financial interests.

Effective Date

.16 This interpretation is effective March 31, 2016. Early implementation is allowed.

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For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Independence is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

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1.300 General Standards

1.300.001 General Standards Rule

.01 A *member* shall comply with the following standards and with any *interpretations* thereof by bodies designated by *Council*:

a. Professional Competence. Undertake only those *professional services* that the *member* or the *member's firm* can reasonably expect to be completed with professional competence.

b. Due Professional Care. Exercise due professional care in the performance of *professional services*.

c. Planning and Supervision. Adequately plan and supervise the performance of *professional services*.

d. Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any *professional services* performed.

(See appendix A, "*Council* Resolution Designating Bodies to Promulgate Technical Standards.") [Prior reference: paragraph .01 of ET section 201]

Interpretations Under the General Standards Rule

1.300.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "General Standards Rule" [1.300.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "General Standards Rule" [1.300.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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1.300.010 Competence

.01 Competence, in this context, means that the *member* or *member's* staff possess the appropriate technical qualifications to perform *professional services* and that the *member*, as required, supervises and evaluates the quality of work performed. Competence encompasses knowledge of the profession's standards, the techniques and technical subject matter involved, and the ability to exercise sound judgment in applying such knowledge in the performance of *professional services*.

.02 A *member's* agreement to perform *professional services* implies that the *member* has the necessary competence to complete those services according to professional standards and to apply the *member's* knowledge and skill with reasonable care and diligence. However, the *member* does not assume a responsibility for infallibility of knowledge or judgment.

.03 The *member* may have the knowledge required to complete the services in accordance with professional standards prior to performance. A normal part of providing *professional services* involves performing additional research or consulting with others to gain sufficient competence.

.04 If a *member* is unable to gain sufficient competence, the *member* should suggest, in fairness to the *client* and public, the engagement of a competent person to perform the needed *professional service*, either independently or as an associate. [Prior reference: paragraph .02 of ET section 201]

1.300.020 Supervision of a Specialist on Consulting Engagements

.01 A *member* who employs a specialist to perform consulting services for the *member's clients* must be qualified to supervise and evaluate the work of that specialist. Although the *member* is not required to be able to perform each of the specialist's tasks, the *member* should be able to define the tasks and evaluate the end product. [Prior reference: paragraphs .017–.018 of ET section 291]

1.300.030 Submission of Financial Statements

.01 When a *member* prepares or submits *financial statements* as a stockholder, a partner, a director, an officer, or an employee of an entity using the *firm's* letterhead or similar identification, the *member* should comply with the "Compliance With Standards Rule" [1.310.001], including any requirements to disclose a lack of *independence* in the *member's* report.

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.02 Refer to the "Use of a CPA Credential" interpretation [2.400.100] of the "Acts Discreditable Rule" [2.400.001] and the "Submission of Financial Statements" interpretation [2.300.030] of the "General Standards Rule" [2.300.001] for additional guidance. [Prior reference: paragraphs .019–.020 of ET section 291]

1.300.040 Use of a Third-Party Service Provider

.01 A *member* who uses a *third-party service provider* to assist the *member* in providing *professional services* such as bookkeeping, tax preparation, or consulting or attest services, including related clerical or data entry functions, is required to comply with the "General Standards Rule" [1.300.001] and the "Compliance With Standards Rule" [1.310.001]. To accomplish this,

a. before using a *third-party service provider*, the *member* should ensure that the *third-party service provider* has the required professional qualifications, technical skills, and other resources. Factors that can be helpful in evaluating a prospective *third-party service provider* include business, financial, and personal references from banks, other CPAs, and other customers of the *third-party service provider*; the *third-party service provider's* professional reputation and recognition in the community; published materials (articles and books that he or she has authored); and the *member's* personal evaluation of the *third-party service provider*.

b. the *member* must adequately plan and supervise the *third-party service provider's professional services* so that the *member* ensures that the services are performed with competence and due professional care. The *member* must also obtain sufficient relevant data to support the work product and comply with all technical standards applicable to the *professional services*.

.02 The *member's* responsibility for planning and supervising the *third-party service provider's* work does not extend beyond the requirements of applicable professional standards, which may vary depending upon the nature of the *member's* engagement.

.03 Refer to the "Use of a Third-Party Service Provider" interpretation [1.150.040] of the "Integrity and Objectivity Rule" [1.100.001] and the "Disclosing Information to a Third-Party Service Provider" interpretation [1.700.040] of the "Confidential Client Information Rule" [1.700.001] for additional guidance. [Prior references: paragraphs .015–.016 and .023–.024 of ET section 291]

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A nonauthoritative basis-for-conclusion document summarizing considerations that were deemed significant in the development of this interpretation is available. See “Background and Basis for Conclusions: Outsourcing — New and Revised Ethics Rulings Under Rule 102 — Integrity and Objectivity, Rule 201 — General Standards, Rule 202 — Compliance With Standards, and Rule 301 — Confidential Client InformationBackground and Basis for Conclusions: Outsourcing — New and Revised Ethics Rulings Under Rule 102 — Integrity and Objectivity, Rule 201 — General Standards, Rule 202 — Compliance With Standards, and Rule 301 — Confidential Client Information” in *Basis for Conclusions Documents*.

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1.310 Compliance With Standards

1.310.001 Compliance With Standards Rule

.01 A *member* who performs auditing, review, compilation, management consulting, tax, or other *professional services* shall comply with standards promulgated by bodies designated by *Council*.

.02 See Appendix A "*Council* Resolution Designating Bodies to Promulgate Technical Standards." [Prior reference: paragraph .01 of ET section 202]

A nonauthoritative question and answer regarding use of standards that have not been established by a body designated by AICPA Council is available. See Ethics Questions & Answers (Q&A) section 450.03Ethics Questions & Answers (Q&A) section 450.03, "Use of Standards That Have Not Been Established By a Body Designated By AICPA Council."

In addition, a nonauthoritative question and answer regarding whether a member needs to comply with the Standards for Consulting Services when providing consulting services but not holding out as a CPA is available. See Q&A section 450.02Q&A section 450.02, "Compliance With Statements on Standards for Consulting Services When Member Does Not Hold Out as a CPA."

Interpretations Under the Compliance with Standards Rule

1.310.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Compliance With Standards Rule" [1.310.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Compliance With Standards Rule" [1.310.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

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Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

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1.320 Accounting Principles

1.320.001 Accounting Principles Rule

.01 A *member* shall not (1) express an opinion or state affirmatively that the *financial statements* or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by *Council* to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the *member* can demonstrate that due to unusual circumstances the *financial statements* or data would otherwise have been misleading, the *member* can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

.02 See appendix A "*Council* Resolution Designating Bodies to Promulgate Technical Standards." [Prior reference: paragraph .01 of ET section 203]

Interpretations Under the Accounting Standards Rule

1.320.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Accounting Principles Rule" [1.320.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Accounting Principles Rule" [1.320.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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1.320.010 Responsibility for Affirming That Financial Statements Are in Conformity With the Applicable Financial Reporting Framework

.01 A *member* shall not state affirmatively that an entity's *financial statements* or other financial data are presented in conformity with generally accepted accounting principles (GAAP) if such statements or data contain any departure from an accounting principle promulgated by a body designated by *Council* to establish such principles. *Members* who affirm that *financial statements* or other financial data are presented in conformity with GAAP should comply with the "Accounting Principles Rule" [1.320.001]. A *member's* representation in a letter or other communication that an entity's *financial statements* are in conformity with GAAP may be considered an affirmative statement within the meaning of this rule with respect to the *member* who signed the letter or other communication (for example, the *member* signed a report to a regulatory authority). [Prior reference: paragraph .05 of ET section 203]

1.320.020 Status of Financial Accounting Standards Board, Governmental Accounting Standards Board, Federal Accounting Standards Advisory Board, and International Accounting Standards Board Interpretations

.01 The "Accounting Principles Rule" [1.320.001] authorizes *Council* to designate bodies to establish accounting principles. *Council* has designated the Financial Accounting Standards Board (FASB) as such a body and has resolved that FASB *Accounting Standards Codification*® (ASC) constitutes accounting principles as contemplated in the rule. *Council* designated the Governmental Accounting Standards Board (GASB), with respect to Statements of Governmental Accounting Standards issued in July 1984 and thereafter, as the body to establish financial accounting principles for state and local governmental entities, pursuant to the "Accounting Principles Rule." *Council* designated the Federal Accounting Standards Advisory Board (FASAB), with respect to Statements of Federal Accounting Standards adopted and issued in March 1993 and subsequently, as the body to establish accounting principles for federal government entities, pursuant to the "Accounting Principles Rule." *Council* designated the International Accounting Standards Board (IASB) as an accounting body for purposes of establishing international financial accounting and reporting principles.

.02 Reference to GAAP in the "Accounting Principles Rule" [1.320.001] means those accounting principles promulgated by bodies designated by *Council*, which are listed in paragraph .01 and in appendix A, "Council Resolution Designating Bodies to Promulgate Technical Standards."

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.03 The Professional Ethics Division will look to the codification or statements and any *interpretations* thereof issued by FASB, GASB, FASAB, or IASB in determining whether a *member* has departed from an accounting principle established by a designated accounting standard-setter in FASB ASC, a Statement of Governmental Accounting Standards, a Statement of Federal Accounting Standards, or International Financial Reporting Standards (IFRS). [Prior reference: paragraph .03 of ET section 203]

1.320.030 Departures From Generally Accepted Accounting Principles

.01 It is difficult to anticipate all the circumstances in which accounting principles may be applied. However, there is a strong presumption that adherence to GAAP would, in nearly all instances, result in *financial statements* that are not misleading. The "Accounting Principles Rule" [1.320.001] recognizes that, upon occasion, there may be unusual circumstances when the literal application of GAAP would have the effect of rendering *financial statements* misleading. In such cases, the proper accounting treatment to apply is that which will not render the *financial statements* misleading.

.02 The question of what constitutes unusual circumstances, as referred to in the "Accounting Principles Rule" [1.320.001], is a matter of professional judgment involving the ability to support the position that adherence to a promulgated principle within GAAP would be regarded generally by reasonable persons as producing misleading *financial statements*.

.03 Examples of circumstances that may justify a departure from GAAP include new legislation or evolution of a new form of business transaction. Examples of circumstances that do not justify departures from GAAP include an unusual degree of materiality or conflicting industry practices. [Prior reference: paragraph .02 of ET section 203]

.04 If the statements or data contain such departures, see the "Accounting Principles Rule" [1.320.001] for further guidance.

1.320.040 Financial Statements Prepared Pursuant to Financial Reporting Frameworks Other Than GAAP

.01 Reference to GAAP in the "Accounting Principles Rule" [1.320.001] means those accounting principles promulgated by bodies designated by *Council*, which are listed in appendix A. The bodies designed by *Council* to promulgate accounting principles are

a. FASAB,

b. FASB,

c. GASB, and

d. IASB.

.02 *Financial statements* prepared pursuant to other accounting principles would be considered financial reporting frameworks other than GAAP within the context of the "Accounting Principles Rule" [1.320.001].

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.03 However, the "Accounting Principles Rule" [1.320.001] does not preclude a *member* from preparing or reporting on *client financial statements* that have been prepared pursuant to financial reporting frameworks other than GAAP, such as

a. financial reporting frameworks generally accepted in another country, including jurisdictional variations of IFRS such that the *client's financial statements* do not meet the requirements for full compliance with IFRS, as promulgated by the IASB;

b. financial reporting frameworks prescribed by an agreement or a contract; or

c. other special purpose frameworks, including statutory financial reporting provisions required by law or a U.S. or foreign governmental regulatory body to whose jurisdiction the entity is subject.

.04 In such circumstances, however, the *client's financial statements* and *member's* reports thereon should not purport that the *financial statements* are in accordance with GAAP, and the *financial statements* or reports on those *financial statements*, or both, should clarify the financial reporting framework(s) used. [Prior reference: paragraph .06 of ET section 203]

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1.400 Acts Discreditable

1.400.001 Acts Discreditable Rule

.01 A *member* shall not commit an act discreditable to the profession. [Prior reference: paragraph .01 of ET section 501]

Interpretations Under the Acts Discreditable Rule

1.400.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Acts Discreditable Rule" [1.400.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.400.010 Discrimination and Harassment in Employment Practices

.01 A *member* would be presumed to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [1.400.001] if a final determination, no longer subject to appeal, is made by a court or an administrative agency of competent jurisdiction that a *member* has violated any antidiscrimination laws of the United States, a state, or

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a municipality, including those related to sexual and other forms of harassment. [Prior reference: paragraph .03 of ET section 501]

1.400.020 Professional Qualifications or Competencies

.01 A *member* who solicits or knowingly discloses Uniform CPA Examination questions or answers without the AICPA's written authorization shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [1.400.001]. [Prior reference: paragraph .07 of ET section 501]

.02 A *member* shall be considered in violation of the "Acts Discreditable Rule" [1.400.001] if a *member* engages in false, misleading, or deceptive acts related to professional qualifications or competencies. Examples of such false, misleading, or deceptive acts include

a. soliciting or knowingly disclosing questions or answers of any professional education course examination unless collaboration is expressly permitted.

b. falsifying or misrepresenting attendance at a professional education course.

c. tampering with the administration of or examination grading for any professional education course or credential.

[See Revision History Table.]

1.400.030 Failure to File a Tax Return or Pay a Tax Liability

.01 A *member* who fails to comply with applicable federal, state, or local laws or regulations regarding (*a*) the timely filing of the *member's* personal tax returns or tax returns of the *member's firm* that the *member* has the authority to timely file or (*b*) the timely remittance of all payroll and other taxes collected on behalf of others may be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [1.400.001]. [Prior reference: paragraph .08 of ET section 501]

1.400.040 Negligence in the Preparation of Financial Statements or Records

.01 A *member* shall be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the *member*, by virtue of his or her negligence, does any of the following:

a. Makes, or permits or directs another to make, materially false and misleading entries in the *financial statements* or records of an entity.

b. Fails to correct an entity's *financial statements* that are materially false and misleading when the *member* has the authority to record an entry.

c. Signs, or permits or directs another to sign, a document containing materially false and misleading information. [Prior reference: paragraph .05 of ET section 501]

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1.400.050 Governmental Bodies, Commissions, or Other Regulatory Agencies

.01 Many governmental bodies, commissions, or other regulatory agencies have established requirements, such as audit standards, guides, rules, and regulations, that *members* are required to follow in the preparation of *financial statements* or related information or in performing attest or similar services for entities subject to their jurisdiction. For example, the SEC; the Federal Communications Commission; state insurance commissions; and other regulatory agencies, such as the PCAOB, have established such requirements.

.02 If a *member* prepares *financial statements* or related information for purposes of reporting to such bodies, commissions, or regulatory agencies, the *member* should follow the requirements of such organizations, in addition to the applicable financial reporting framework.

.03 If a *member* agrees to perform an attest or a similar service for the purpose of reporting to such bodies, commissions, or regulatory agencies, the *member* should follow such requirements, in addition to the applicable financial reporting framework.

.04 A *member's* material departure from such requirements would be considered a violation of the "Acts Discreditable Rule" [1.400.001] unless the *member* discloses in the *financial statements* or his or her report, as applicable, that such requirements were not followed and the applicable reasons. [Prior reference: paragraph .06 of ET section 501]

1.400.055 Governmental Audits

.01 Engagements for audits of government grants, government units, or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to GAAS.

.02 If a *member* accepts such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules, and regulations, the *member* is obligated to follow such requirements, in addition to GAAS.

.03 Failure to do so is a violation of the "Acts Discreditable Rule" [1.400.001] unless the *member* discloses in his or her report that such requirements were not followed and the applicable reasons for not following the requirements. [Prior reference: paragraph .04 of ET section 501]

1.400.060 Indemnification and Limitation of Liability Provisions

.01 Certain governmental bodies, commissions, or other regulatory agencies (collectively, regulators) have established requirements through laws, regulations, or published interpretations that

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1. prohibit entities subject to their regulation (regulated entity) from including certain types of indemnification and limitation of liability provisions in agreements for the performance of audit or other attest services that are required by such regulators or
2. provide that the existence of such provisions disqualifies a *member* from rendering such services to these entities.

For example, federal banking regulators, state insurance commissions, and the SEC have established such requirements.

.02 If a *member* enters into or directs or knowingly permits another individual to enter into a contract for the performance of audit or other attest services that are subject to the requirements of these regulators, the *member* should not include or knowingly permit or direct another individual to include an indemnification or limitation of liability provision that would cause the regulated entity or a *member* to be in violation of such requirements or disqualify a *member* from providing such services to the regulated entity. A *member* who enters into or directs or knowingly permits another individual to enter into such an agreement for the performance of audit or other attest services would be considered in violation of the "Acts Discreditable Rule" [1.400.001].

.03 Refer to the "Indemnification of a Covered Member" [1.228.010] and "Indemnification of an Attest Client" [1.228.020] interpretations of the "Independence Rule" [1.200.001] for additional guidance. [Prior reference: paragraph .09 of ET section 501]

1.400.070 Confidential Information Obtained From Employment or Volunteer Activities

.01 A *member* should maintain the confidentiality of his or her employer's or *firm's* (employer) confidential information and should not use or disclose any confidential employer information obtained as a result of an employment relationship, such as discussions with the employer's vendors, customers, or lenders (for example, any confidential information pertaining to a current or previous employer, subsidiary, affiliate, or parent thereof, as well as any entities for which the *member* is working in a volunteer capacity).

.02 For purposes of this interpretation, confidential employer information is any proprietary information pertaining to the employer or any organization for whom the *member* may work in a volunteer capacity that is not known to be available to the public and is obtained as a result of such relationships.

.03 A *member* should be alert to the possibility of inadvertent disclosure, particularly to a close business associate or *close relative* or *immediate family* member. The *member* should also take reasonable steps to ensure that staff under his or her control or others within the *employing organization* and persons from whom advice and assistance are obtained are aware of the confidential nature of the information.

.04 When a *member* changes employment, a *member* should not use confidential employer information acquired as a result of a prior employment relationship to his or her personal advantage or the advantage of a third party, such as a current or prospective employer.

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The requirement to maintain the confidentiality of an employer's confidential information continues even after the end of the relationship between a *member* and the employer. However, the *member* is entitled to use experience and expertise gained through prior employment relationships.

.05 A *member* would be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the *member* discloses or uses any confidential employer information acquired as a result of employment or volunteer relationships without the proper authority or specific consent of the employer or organization for whom the *member* may work in a volunteer capacity, unless there is a legal or professional responsibility to use or disclose such information.

.06 The following are examples of situations in which *members* are permitted or may be required to disclose confidential employer information or when such disclosure may be appropriate:

a. Disclosure is permitted by law and authorized by the employer.

b. Disclosure is required by law, for example, to

   i. comply with a validly issued and enforceable subpoena or summons or

   ii. inform the appropriate public authorities of violations of law that have been discovered.

c. There is a professional responsibility or right to disclose information, when not prohibited by law, to

   i. initiate a complaint with, or respond to any inquiry made by, the Professional Ethics Division or trial board of the AICPA or a duly constituted investigative or disciplinary body of a state CPA society, board of accountancy, or other regulatory body;

   ii. protect the *member's* professional interests in legal proceedings;

   iii. comply with professional standards and other ethics requirements; or

   iv. report potential concerns regarding questionable accounting, auditing, or other matters to the employer's confidential complaint hotline or *those charged with governance*.

d. Disclosure is permitted on behalf of the employer to

   i. obtain financing with lenders;

   ii. communicate with vendors, *clients* , and customers; or

   iii. communicate with the employer's external accountant, attorneys, regulators, and other business professionals.

.07 In deciding whether to disclose confidential employer information, relevant factors to consider include the following:

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a. Whether all the relevant information is known and substantiated to the extent that it is practicable. When the situation involves unsubstantiated facts, incomplete information, or unsubstantiated conclusions, the *member* should use professional judgment in determining the type of disclosure to be made, if any.

b. Whether the parties to whom the communication may be addressed are appropriate recipients.

.08 A *member* may wish to consult with his or her legal counsel prior to disclosing, or determining whether to disclose, confidential employer information.

.09 Refer to the "Subordination of Judgment" interpretation [1.130.020] of the "Integrity and Objectivity Rule" [1.100.001] and the "Confidential Information" topic [1.700] for additional guidance. [Prior reference: paragraph .10 of ET section 501]

1.400.090 False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services

.01 A *member* would be in violation of the "Acts Discreditable Rule" [1.400.001] if the *member* promotes or markets the *member's* abilities to provide *professional services* or makes claims about the *member's* experience or qualifications in a manner that is false, misleading, or deceptive.

.02 Promotional efforts would be false, misleading, or deceptive if they contain any claim or representation that would likely cause a reasonable person to be misled or deceived. This includes any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body.

.03 Refer to the "False, Misleading, or Deceptive Acts in Advertising or Solicitations" interpretation [1.600.010] of the "Advertising and Other Forms of Solicitation Rule" [1.600.001] for additional guidance. [No prior reference: new content]

Effective Date

.04 Effective December 15, 2014.

1.400.100 Use of the CPA Credential

.01 A *member* should refer to applicable state accountancy laws and board of accountancy rules and regulations for guidance regarding the use of the CPA credential. A *member* who fails to follow the accountancy laws, rules, and regulations on use of the CPA credential in any of the jurisdictions in which the CPA practices would be considered to have used the CPA credential in a manner that is false, misleading, or deceptive and in violation of the "Acts Discreditable Rule" [1.400.001]. [Prior reference .12 section 501]

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1.400.200 Records Requests

Terminology

.01 The following terms are defined here solely for use with this interpretation:

a. A client includes current and former *clients*.

b. A member means the *member* or the *member's firm*.

c. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.

d. Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).

e. Member's work products are deliverables set forth in the terms of the engagement, such as tax returns.

f. Working papers are all other items prepared solely for purposes of the engagement and include items prepared by the

   i. member, such as audit programs, analytical review schedules, and statistical sampling results and analyses.

   ii. client at the request of the member and reflecting testing or other work done by the member.

g. Make records available means to provide the records in any format that is usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.

h. Beneficiary is a person or entity for which the engaging entity has requested the member to perform *professional services*.

Applicability

.02 When a person or entity engages a member to perform *professional services* (engaging entity) with respect to a beneficiary, the member will be considered in compliance with the requirements of this interpretation related to client-provided records if the member makes these records available to the person or entity that provided the records to the member or to the individual designated or held out as the entity's or individual's representative.

.03 The member will be considered in compliance with the requirements of this interpretation related to member-prepared records and a member's work products if the

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member makes such records and work products available to the beneficiary or to the individual designated or held out as the beneficiary's representative. For example, if a company engages a member to perform personal tax services for the benefit of its executives, the member would be in compliance with the interpretation if the member made the tax returns available to the executives (see the "Confidential Client Information Rule" [1.700.001]).

.04 When an engaging entity engages a member to perform *professional services* with respect to another entity that is not the beneficiary of the *professional services*, absent an agreement stating otherwise, the member would be in compliance with the requirements of this interpretation related to a member's work products if the member made such work products available to the engaging entity or to the individual designated or held out as the engaging entity's representative. For example, if a company engaged a member to value the assets of another company for a possible acquisition, absent an agreement stating otherwise, the member would be in compliance with this interpretation if the member made the valuation report available only to the engaging entity.

Interpretation

.05 Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory bodies. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records, even though fees are due to the member for the work performed. Failure to comply with the more restrictive provisions of the applicable regulatory body's rules and regulations concerning the return of certain records would constitute a violation of this interpretation.

.06 When an initial request for client-provided records is received, the member should make those records in the member's custody or control available to the person or entity that provided the records to the member. The member may charge a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records; however, the client-provided records may not be withheld for nonpayment of such fees.

.07 A member and the client or beneficiary may agree to terms other than those stated in this paragraph. When this occurs, the member should respond in accordance with such agreement. Otherwise, a member should respond to a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been made available to the client or, if applicable, to the beneficiary as follows:

a. The member should make available member-prepared records relating to a completed and issued work product; however, such records may be withheld if fees are due to the member for that specific work product.

b. Member's work products should be made available; however, such work products may be withheld if

    i. fees are due to the member for the specific work product;

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ii. the work product is incomplete;

iii. for purposes of complying with professional standards (for example, withholding an audit report with outstanding audit issues); or

iv. threatened or outstanding litigation exists concerning the engagement or the member's work.

.08 Once a member has complied with paragraphs .02–.07, the member is under no ethical obligation to

a. comply with any subsequent requests to again make records or copies of records available. However, if after complying with a request, a loss of records due to a natural disaster or an act of war is experienced, the member should, when practicable, comply with an additional request to make such records available.

b. retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [Prior reference: paragraph .02 of ET section 501]

c. make the records available to any other associated party, such as the general partner, majority shareholder, or spouse. [Prior reference: paragraphs .377–.378 of ET section 591]

.09 Working papers are the member's property, and the member is not required to make such information available. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member.

.10 In fulfilling a request for the member's copy of client-provided records that was previously made available to the client or a party identified in paragraph .02, member-prepared records, or a member's work products, the member may

a. charge a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records and require payment before the member makes the records available.

b. make the requested records available in any usable and accessible format. However, the member is not required to convert records that are not in electronic format to electronic format. If the records are requested in a specific format and the records are available in such format within the member's custody and control, the request should be honored. In addition, the member is not required to make formulas available, unless the member was engaged to make such formulas available as part of a completed work product or the formulas were used to create member-prepared records without which the client's financial information would be incomplete.

c. make and retain copies of any records that the member already made available.

.11 When a member is required to return or make records available, the member should comply as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

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.12 The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. [Prior reference: paragraph .02 of ET section 501]

.13 A member would be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the member does not comply with the requirements of this interpretation.

[See Revision History Table.]

Nonauthoritative questions and answers are available. See Ethics Questions & Answers section 650Ethics Questions & Answers section 650, *Records Request*.

1.400.205 Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice

Sale or Transfer of Member's Practice

.01 A *member* or *member's firm* (member) that sells or transfers all or part of the member's practice to another person, *firm*, or entity (successor firm) and will no longer retain any ownership in the practice should do all of the following:

a. Submit a written request to each *client* subject to the sale or transfer, requesting the *client's* consent to transfer its files to the successor firm and, notify the *client* that its consent may be presumed if it does not respond to the member's request within a period of not less than 90 days, unless prohibited by law, including but not limited to the rules and regulations of the applicable state boards of accountancy. The member should not transfer any *client* files to the successor firm until either the *client's* consent is obtained or the 90 days has lapsed, whichever is shorter. The member is encouraged to retain evidence of consent, whether obtained from the *client* or presumed after 90 days.

b. With respect to files not subject to the sale or transfer, make arrangements to return any *client* records that the member is required to provide to the *client* as set forth in the "Records Request" interpretation [1.400.200] unless the member and *client* agree to some other arrangement.

.02 In cases in which the member is unable to contact the *client*, *client* files and records not transferred should be retained in a confidential manner and in accordance with the *firm's* record retention policy or as required by applicable legal or regulatory requirements, whichever is longer. When practicing before the IRS or other taxing authorities or regulatory bodies, members should ensure compliance with any requirements that are more restrictive.

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Discontinuation of Member's Practice

.03 A member who discontinues his or her practice but does not sell or transfer the practice to a successor firm, should do all of the following:

a. Notify each *client* in writing of the discontinuation of the practice. The member is encouraged to retain evidence of notification made to *clients*. The member is not required to provide notification to former *clients* of the *firm*.

b. Make arrangements to return any *client* records that the member is required to provide to the *client* as set forth in the "Records Request" interpretation [1.400.200] unless the member and *client* agree to some other arrangement.

.04 In cases in which the member is unable to contact the *client*, *client* files should be retained in a confidential manner and in accordance with the *firm's* record retention policy or as required by applicable legal or regulatory requirements, whichever is longer. When practicing before the IRS or other taxing authorities or regulatory bodies, members should ensure compliance with any requirements that are more restrictive.

Acquisition of Practice by a Member

.05 A member who acquires all or part of a practice from another person, *firm*, or entity (predecessor firm) should be satisfied that all *clients* of the predecessor firm subject to the acquisition have, as required in paragraph .01, consented to the member's continuation of *professional services* and retention of any *client* files or records the successor firm retains

.06 A member will be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the member does not comply with any of the requirements of this interpretation.

Effective Date

.07 This interpretation is effective June 30, 2017. Early implementation is allowed.

A nonauthoritative question and answer related to form of communication and transfer of client files to another partner in the firm or during a merger is available. See Ethics Questions & Answers section 670.02Ethics Questions & Answers section 670.02, "Transfer of Files to Another Partner in the Firm."

1.400.210 Removing Client Files or Proprietary Information From a Firm

.01 A *member* whose employment relationship is terminated would be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the *member* takes or retains (*a*) originals or copies (in any format) from the *firm's client* files or (*b*) proprietary information

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without the *firm's* permission, unless the *member* has a contractual arrangement with the *firm* allowing such action. [Prior reference: paragraphs .381–.382 of ET section 591]

.02 A *firm's* ownership agreement would govern ownership of *client* files and proprietary information; accordingly, this interpretation would not apply to owners of *firms*. [No prior reference: new content]

Effective Date

.03 Paragraph .02 of this interpretation is effective December 15, 2014.

1.400.240 Use of Confidential Information From Nonclient Sources

.01 If a *member* discloses confidential information obtained from a prospective *client* or nonclient without consent, the *member* would be in violation of the "Acts Discreditable Rule" [1.400.001]. [Prior reference: paragraphs .027–.028 of ET section 391 and new content]

Effective Date

.02 This interpretation is effective December 15, 2014.

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1.500 Fees and Other Types of Remuneration

1.500.008 Unpaid Fees

.01 Refer to the "Fees" topic [1.230] of the "Independence Rule" [1.200.001] for guidance. [No prior reference: new content]

Effective Date

.02 Effective December 15, 2014.

1.510 Contingent Fees

1.510.001 Contingent Fees Rule

.01 A *member* in *public practice* shall not

a. Perform for a contingent fee any *professional services* for, or receive such a fee from a *client* for whom the *member* or the *member's firm* performs,

   i. an audit or review of a *financial statement*; or

   ii. a compilation of a *financial statement* when the *member* expects, or reasonably might expect, that a third party will use the *financial statement* and the *member's* compilation report does not disclose a lack of *independence*; or

   iii. an examination of prospective financial information; or

b. Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any *client*.

.02 The prohibition in a. above applies during the period in which the *member* or *member's firm* is engaged to perform any of the services listed above and the period covered by any historical *financial statements* involved in any such listed services.

.03 Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

.04 A *member's* fees may vary depending, for example, on the complexity of services rendered. [Prior reference: paragraph .01 of ET section 302]

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Interpretations Under the Contingent Fees Rule

1.510.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Contingent Fees Rule" [1.510.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Contingent Fees Rule" [1.510.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the *member* has implemented the revised code. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.510.010 Tax Matters

.01 This interpretation defines certain terms used in the "Contingent Fees Rule" [1.510.001] and provides examples of the application of the rule in tax matters. When practicing before the IRS or before other taxing authorities, *members* should also comply with other applicable and more restrictive requirements.

Contingent Fee Language

.02 Preparation of an original or amended tax return or claim for tax refund includes giving advice on events that have occurred at the time that the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, an entry, or another portion of a return or claim for refund

.03 A fee is considered determined based on the findings of governmental agencies and, therefore, is not a contingent fee if the *member* can demonstrate a reasonable expectation,

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at the time of a fee arrangement, that a government agency will provide substantive consideration of the subject matter with respect to the *member's client*. Such an expectation is not reasonable if the *member* prepares a *client's* original tax returns as outlined in paragraph .02 above.

Examples of When a Contingent Fee Is Permitted

.04 The following are examples of circumstances in which a contingent fee is permitted under the "Contingent Fees Rule" [1.510.001]:

a. Representing a *client* in connection with a revenue agent's examination of the *client's* federal or state income tax return

b. Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is the subject of a test case involving a different taxpayer or with respect to which the taxing authority is developing a position

c. Filing an amended federal or state income tax return (or refund claim) claiming a tax refund in an amount greater than the threshold for review by the Joint Committee on Taxation or state taxing authority

d. Requesting a refund of either overpayments of interest or penalties charged to a *client's* account or tax deposits that a federal or state taxing authority improperly accounted for in circumstances in which the taxing authority has established procedures for the substantive review of such refund requests

e. Requesting, by means of a protest or similar document, the state or local taxing authority's consideration of a reduction in a property's assessed value under an established taxing authority's review process for hearing all taxpayer arguments relating to assessed value

f. Representing a *client* in connection with obtaining a private letter ruling or influencing the drafting of a regulation or statute

Example of When a Contingent Fee Is Not Permitted

.05 A contingent fee is not permitted if a *member* prepared a *client's* amended federal or state income tax return claiming a refund of taxes because a valid deduction was inadvertently omitted from the originally filed return. [Prior reference: paragraph .02 of ET section 302]

1.510.020 Receipt of Contingent Fee

.01 A contingent fee is considered to be received when the *member* has completed the related services and the fee is determined. [Prior reference: paragraphs .033–.034 of ET section 391]

1.510.030 Services Performed by a Member's Spouse For a Contingent Fee

.01 A *member's* spouse may provide services for a contingent fee to a *client* with respect to which the *member* performs a service listed in paragraph .01*a* of the "Contingent Fees Rule" [1.510.001] without causing the *member* to be in violation of the "Contingent Fees Rule" if

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a. the activities of the *member's* spouse are separate from the *member's* practice and

b. the *member* is not significantly involved in the spouse's activities.

.02 In all such situations, the *members* should consider the "Conflicts of Interest" interpretation [1.110.010] of the "Integrity and Objectivity Rule" [1.100.001] to determine the appropriate action. [Prior reference: paragraphs .037–.038 of ET section 391]

[See Revision History Table.]

1.510.040 Contingent Fee Arrangements With an Investment Advisory Services Nonattest Client That Is Related to a Client

.01 A *member* or *member's firm* may provide investment advisory services for a contingent fee to

a. owners, officers, or employees of a *client* with respect to which the *member* performs a service listed in paragraph .01*a* of the "Contingent Fees Rule" [1.510.001].

b. a nonattest *client* employee benefit plan that is sponsored by an *attest client* with respect to which the *member* performs a service listed in paragraph .01*a* of the "Contingent Fees Rule."

.02 The *member* should also consider the "Conflicts of Interest" interpretation [1.110.010] and the "Confidential Client Information Rule" [1.700.001] to determine the appropriate action(s). [Prior reference: paragraphs .049–.050 of ET section 391]

[See Revision History Table.]

1.510.050 Investment Advisory Services

.01 A *member* or *member's firm* may provide investment advisory services for a fee based on a percentage of the investment portfolio to a *client* with respect to which the *member* performs a service listed in paragraph .01*a* of the "Contingent Fees Rule" [1.510.001] without violating that rule if all of the following *safeguards* are met:

a. The fee is determined based on a specified percentage of the *attest client's* investment portfolio.

b. The dollar amount of the portfolio on which the fee is based is determined at the beginning of each quarter (or longer period of time as may be agreed upon) and is adjusted only for the *attest client's* additions or withdrawals during the period.

c. The fee arrangement is not renewed with the *attest client* more frequently than on a quarterly basis. [Prior reference: paragraphs .047–.048 of ET section 391]

.02 When performing such services, the *member* should also consider the "Independence Rule" [1.200.001], especially the *interpretations* of the "Nonattest Services" subtopic [1.295] under the "Independence Rule."

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[See Revision History Table.]

1.520 Commissions and Referral Fees

1.520.001 Commissions and Referral Fees Rule

.01 *Prohibited commissions.* A *member* in *public practice* shall not for a commission recommend or refer to a *client* any product or service, or for a commission recommend or refer any product or service to be supplied by a *client*, or receive a commission, when the *member* or *member's firm* also performs for that *client*

a. an audit or review of a *financial statement*; or

b. a compilation of a *financial statement* when the *member* expects, or reasonably might expect, that a third party will use the *financial statement* and the *member's* compilation report does not disclose a lack of *independence*; or

c. an examination of prospective financial information.

.02 This prohibition applies during the period in which the *member* is engaged to perform any of the services listed above and the period covered by any historical *financial statements* involved in such listed services.

.03 *Disclosure of permitted commissions.* A *member* in *public practice* who is not prohibited by this rule from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the *member* recommends or refers a product or service to which the commission relates.

.04 *Referral fees.* Any *member* who accepts a referral fee for recommending or referring any service of a CPA to any person or entity or who pays a referral fee to obtain a *client* shall disclose such acceptance or payment to the *client*. [Prior reference: paragraph .01 of ET section 503]

A nonauthoritative question and answer regarding disclosure of a commission is available. See Ethics Questions & Answers section 730.01Ethics Questions & Answers section 730.01, "Disclosure of Commissions."

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Interpretations Under the Commission and Referral Fees Rule

1.520.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Commissions and Referral Fees Rule" [1.520.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Commissions and Referral Fees Rule" [1.520.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the *member* has implemented the revised code. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.520.020 Receipt of Commission

.01 A commission is considered to be received when the performance of the related services is complete and the fee has been determined. For example, if in one year a *member* sells a life insurance policy to a *client*, and the *member's* commission payments are determined to be a fixed percentage of future years' renewal premiums, the commission is deemed to be received in the year that the policy is sold. [Prior reference: paragraphs .367–.368 of ET section 591]

1.520.030 Services Performed by a Member's Spouse For a Commission

.01 A *member's* spouse may receive a commission for referring products or services to or from a *client* with respect to which the *member* performs a service listed in paragraph .01 of the "Commissions and Referral Fees Rule" [1.520.001] without causing the *member* to be in violation of the "Commissions and Referral Fees Rule" if both

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a. the activities of the *member's* spouse are separate from the *member's* practice and

b. the *member* is not significantly involved in the spouse's activities.

.02 In such situations, *members* should consider the "Conflicts of Interest" interpretation [1.110.010] of the "Integrity and Objectivity Rule" [1.100.001] to determine the appropriate action. [Prior reference: paragraphs .373–.374 of ET section 591]

[See Revision History Table.]

1.520.040 Referral of Products of Others

.01 Paragraph .04 of the "Application of the AICPA Code" [0.200.020] section of the preface provides that a *member* shall not permit others to perform acts on the *member's* behalf that, if carried out by the *member*, would place the *member* in violation of the rules. Therefore, the *member* would be held responsible for the actions of third parties, such as distributors or agents, that act on the *member's* behalf.

.02 For example, if the *member* or *member's firm* performs for a *client* a service listed in paragraph .01 of the "Commissions and Referral Fees Rule" [1.520.001], the *member* may not recommend or refer to that *client* any product or services for a commission that will be paid through a distributor or an agent or receive a commission for the recommendation or referral. This prohibition applies during the period in which the *member* is engaged to perform any of the services listed in paragraph .01 of the rule and during the period covered by any historical *financial statements* in such services.

.03 In addition, if a *member* receives a commission for referring a third party's product or service to a *client* with respect to which the *member* does not perform a service listed in paragraph .01 of the "Commissions and Referral Fees Rule" [1.520.001] through a distributor or an agent and receives a commission from the third party, the *member* should disclose the commission, as discussed in paragraph .03 of the "Commissions and Referral Fees Rule." However, any subsequent performance of a service listed in paragraph .01 of that rule during a period in which the commission was received would be considered to violate the rule. [Prior reference: paragraphs .375–.376 of ET section 591]

[See Revision History Table.]

A nonauthoritative question and answer regarding disclosure of a commission is available. See Ethics Questions & Answers section 730.01Ethics Questions & Answers section 730.01, "Disclosure of Commissions."

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1.520.050 Commission Arrangements With an Investment Advisory Services Nonattest Client That Is Related to a Client

.01 A *member* or *member's firm* may receive a commission for referring a nonclient or nonattest *client's* products or services to the following:

a. Owners, officers, or employees of a *client* with respect to which the *member* performs a service listed in paragraph .01 of the "Commissions and Referral Fees Rule" [1.520.001]

b. A nonattest *client* employee benefit plan that is sponsored by a *client* with respect to which the *member* performs a service listed in paragraph .01 of the "Commissions and Referral Fees Rule"

.02 In such instances, the *member* should disclose the commission arrangement to the *client's* owners, officers, or employees or the employee benefit plan. The *member's* failure to disclose the commission would be in violation of the "Commissions and Referral Fees Rule" [1.520.001].

.03 When making the disclosure, *members* should also consider the applicability of the "Conflicts of Interest" interpretation [1.110.010] of the "Integrity and Objectivity Rule" [1.100.001] and the *member's* professional responsibilities under the "Confidential Client Information Rule" [1.700.001] to determine the appropriate action(s). [Prior reference: paragraphs .383–.384 of ET section 591]

[See Revision History Table.]

A nonauthoritative question and answer regarding disclosure of a commission is available. See Ethics Questions & Answers section 730.01Ethics Questions & Answers section 730.01, "Disclosure of Commissions."

1.520.060 Sale of Products to Clients

.01 If a *member* purchases a product, taking title to the product and assuming all the associated risks of ownership, any profit the *member* receives on reselling it to a *client* would not constitute a commission. [Prior reference: paragraphs .369–.370 of ET section 591]

1.520.070 Billing for a Subcontractor's Services

.01 If, in providing *professional services* to a *client*, a *member* subcontracts the services of another person or entity, any mark-up of the cost of the subcontracted services would not constitute a commission.

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.02 Refer to the following for additional guidance:

- "Use of a Third-Party Service Provider" interpretation [1.150.040] of the "Integrity and Objectivity Rule" [1.100.001]
- "Fees" subtopic [1.230] under the "Independence Rule" [1.200.001]
- "Use of a Third-Party Service Provider" interpretation [1.300.040] of the "General Standards Rule" [1.300.001]
- "Disclosing Information to a Third-Party Service Provider" interpretation [1.700.040] of the "Confidential Client Information Rule" [1.700.001] [Prior reference: paragraphs .371–.372 of ET section 591]

Effective Date

.03 The revisions to this interpretation are effective December 15, 2014.

1.520.080 Disclosure of Commissions and Referral Fees

.01 The *member* should make the disclosures required by paragraphs .03 and .04 of the "Commissions and Referral Fees Rule" [1.520.001] in writing.

Effective Date

.02 Effective for commission or a referral fee arrangements entered into on or after January 31, 2017.

A nonauthoritative question and answer regarding disclosure of a commission is available. See Ethics Questions & Answers section 730.01Ethics Questions & Answers section 730.01, "Disclosure of Commissions."

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1.600 Advertising and Other Forms of Solicitation

1.600.001 Advertising and Other Forms of Solicitation Rule

.01 A *member* in *public practice* shall not seek to obtain *clients* by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited. [Prior reference: paragraph .01 of ET section 502]

Interpretations Under the Advertising and Other Forms of Solicitation Rule

1.600.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Advertising and Other Forms of Solicitation Rule" [1.600.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Advertising and Other Forms of Solicitation Rule" [1.600.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

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1.600.010 False, Misleading, or Deceptive Acts in Advertising or Solicitations

.01 A *member* would be in violation of the "Advertising and Other Forms of Solicitation Rule" [1.600.001] if the *member's* promotional efforts are false, misleading, or deceptive. If a *member* is asked to perform *professional services* for a *client* or customer of a third party, the *member* should determine that the third party's promotional efforts comply with the "Advertising and Other Forms of Solicitation Rule." Such action is required because the *member* will receive the benefits of such efforts by third parties, and *members* must not do through others what they are prohibited from doing themselves. [Prior reference: paragraph .06 of ET section 502]

.02 Promotional efforts would be considered false, misleading, or deceptive if they

a. create false or unjustified expectations of favorable results.

b. imply the ability to influence any court, tribunal, regulatory agency, or similar body or official.

c. contain a representation that the *member* will perform specific *professional services* in current or future periods for a stated fee, estimated fee, or fee range when it was likely at the time of the representation that such fees would be substantially increased and the *member* failed to advise the prospective *client* of that likelihood.

d. contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived. [Prior reference: paragraph .03 of ET section 502]

1.600.030 Use of AICPA-Awarded Designation

.01 A *member* who holds an AICPA-awarded designation, such as the Personal Financial Specialist (PFS) designation, may use the designation after the *member's* name.

.02 A *member's firm* may use an AICPA-awarded designation, such as the PFS designation, on *firm* letterhead and in marketing materials if all the *firm's partners* hold the AICPA-awarded designation. [Prior reference: paragraphs .365–.366 of ET section 591]

Effective Date

.03 The revisions to this interpretation are effective December 15, 2014.

1.600.100 Use of the CPA Credential

.01 A *member* should refer to applicable state accountancy laws and board of accountancy rules and regulations for guidance regarding the use of the CPA credential. A *member* who fails to follow the accountancy laws, rules, and regulations on use of the CPA credential in any of the jurisdictions in which the CPA practices would be considered to have used the CPA credential in a manner that is false, misleading, or deceptive and in violation of the

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"Advertising and Other Forms of Solicitation Rule" [1.600.001]. [Prior reference .07 section 502.]

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1.700 Confidential Information

1.700.001 Confidential Client Information Rule

.01 A *member* in *public practice* shall not disclose any *confidential client information* without the specific consent of the *client*.

.02 This rule shall not be construed (1) to relieve a *member* of his or her professional obligations of the "Compliance With Standards Rule" [1.310.001] or the "Accounting Principles Rule" [1.320.001], (2) to affect in any way the *member's* obligation to comply with a validly issued and enforceable subpoena or summons, or to prohibit a *member's* compliance with applicable laws and government regulations, (3) to prohibit review of a *member's* professional practice under AICPA or state CPA society or Board of Accountancy authorization, or (4) to preclude a *member* from initiating a complaint with, or responding to any inquiry made by, the professional ethics division or trial board of the *Institute* or a duly constituted investigative or disciplinary body of a state CPA society or Board of Accountancy. *Members* of any of the bodies identified in (4) above and *members* involved with professional practice reviews identified in (3) above shall not use to their own advantage or disclose any *member's confidential client information* that comes to their attention in carrying out those activities. This prohibition shall not restrict *members'* exchange of information in connection with the investigative or disciplinary proceedings described in (4) above or the professional practice reviews described in (3) above. [Prior reference: paragraph .01 of ET section 301]

Interpretations Under the Confidential Client Information Rule

1.700.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Confidential Client Information Rule" [1.700.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Confidential Client Information Rule" [1.700.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

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Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

1.700.010 Client Competitors

.01 When a *member* provides *professional services* to *clients* that are competitors, *threats* to compliance with the "Confidential Client Information Rule" [1.700.001] may exist because the *member* may have access to *confidential client information*, such as sales, purchases, and gross profit percentages of the respective competitors.

.02 To reduce the *threat* of disclosing *confidential client information* to a competitor, the *member* should emphasize to all relevant parties, including employees of the *firm* and affected *clients*, that the "Confidential Client Information Rule" [1.700.001] prohibits *members* from revealing to others any *confidential client information* obtained in their professional capacity. [Prior reference: paragraphs .011–.012 of ET section 391]

1.700.020 Disclosing Information From Previous Engagements

.01 When a *member* evaluates whether to accept a new *client* engagement, the *member* should consider whether knowledge and experience that the *member* or *member's firm* will share while providing the *professional services* to the prospective *client* would be *confidential client information*. If such information would be *confidential client information*, and the circumstances are such that the prospective *client* would be able to identify the *client* or *clients* that are the source of the information, the engagement should not be accepted unless the *member* obtains the original *client's* specific consent to disclose the information. [Prior reference: paragraphs .029–.030 of ET section 391]

.02 When a *member* withdraws from an engagement due to, for example, discovery of irregularities in a *client's* tax return, if contacted by the successor, the *member* should suggest that the successor ask the *client* to permit the *member* to discuss all matters freely with the successor. The successor is then on notice of some conflict.

.03 The "Confidential Client Information Rule" [1.700.001] is not intended to help an unscrupulous *client* cover up illegal acts or otherwise hide information by changing CPAs. Due to the possibility of legal implications in such matters, the *member* should seek legal advice on the *member's* status and obligations in the matter. [Prior reference: paragraphs .005–.006 of ET section 391]

1.700.030 Disclosing Information to Clients

.01 When a *member* is engaged by either spouse to prepare a married couple's joint tax return, the two spouses are considered to be one *client*, even if the *member* deals exclusively with one spouse. Accordingly, if the married couple is undergoing a divorce and one spouse directs the *member* to withhold joint tax information from the other spouse, the *member* may provide the information to both spouses, in compliance with the "Confidential Client

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Information Rule" [1.700.001], because both are the *member's client*. The *member* should consider reviewing

a. the legal implications of such disclosure with an attorney and

b. responsibilities under any tax performance standards, such as Section 10.29 of IRS Circular 230. [Prior reference: paragraphs .031–.032 of ET section 391]

.02 When a person or entity engages a *member* to perform *professional services* (engaging entity) for the benefit of another person or entity (beneficiary), the engaging entity and the beneficiary are considered two separate *clients*. Accordingly, the *member* should not disclose *confidential client information* of either *client* to the other without consent of the *client* whose confidential information is to be disclosed. For example, if a company engages a *member* to perform personal tax services for the benefit of its executives, the *member's* disclosure of the executives' *confidential client information* to the company without the consent of the applicable executive would be a violation of the "Confidential Client Information Rule" [1.700.001]. [Prior reference: paragraphs .041–.042 of ET section 391]

[See Revision History Table.]

1.700.040 Disclosing Information to a Third-Party Service Provider

.01 When a *member* uses a *third-party service provider* to assist the *member* in providing *professional services*, *threats* to compliance with the "Confidential Client Information Rule" [1.700.001] may exist.

.02 *Clients* may not expect the *member* to use a *third-party service provider* to assist the *member* in providing the *professional services*. Therefore, before disclosing *confidential client information* to a *third-party service provider*, the *member* should do one of the following:

a. Enter into a contractual agreement with the *third-party service provider* to maintain the confidentiality of the information and provide reasonable assurance that the *third-party service provider* has appropriate procedures in place to prevent the unauthorized release of confidential information to others. The nature and extent of procedures necessary to obtain reasonable assurance depends on the facts and circumstances, including the extent of publicly available information on the *third-party service provider's* controls and procedures to *safeguard confidential client information*.

b. Obtain specific consent from the *client* before disclosing *confidential client information* to the *third-party service provider*.

.03 Refer to the "Use of a Third-Party Service Provider" interpretation [1.150.040] of the "Integrity and Objectivity Rule" [1.100.001] and the "Use of a Third-Party Service Provider" interpretation [1.300.040] of the "General Standards Rule" [1.300.001] for additional guidance. [Prior reference: paragraphs .001–.002 of ET section 391]

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A nonauthoritative basis-for-conclusions document that summarizes considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: Outsourcing — New and Revised Ethics Rulings Under Rule 102 — Integrity and Objectivity, Rule 201 — General Standards, Rule 202 — Compliance With Standards, and Rule 301 — Confidential Client InformationBackground and Basis for Conclusions: Outsourcing — New and Revised Ethics Rulings Under Rule 102 — Integrity and Objectivity, Rule 201 — General Standards, Rule 202 — Compliance With Standards, and Rule 301 — Confidential Client Information" in *Basis for Conclusions Documents*.

In addition, nonauthoritative sample client disclosure language that could be used to fulfill the requirement discussed in this interpretation is also available at www.aicpa-cima.com/resources/download/sample-client-disclosure-language-for-outsourcing-rules.

1.700.050 Disclosing Client Information in Connection With a Review or Acquisition of the Member's Practice

.01 For purposes of the "Confidential Client Information Rule" [1.700.001], a review of a *member's* professional practice includes a review performed in conjunction with a prospective purchase, sale, or merger of all or part of a *member's* practice. Such reviews may *threaten* a *member's* compliance with the "Confidential Client Information Rule." To reduce the *threat* to an *acceptable level*, a *member* must take appropriate precautions (for example, through a written confidentiality agreement with the prospective purchaser) to help ensure that the prospective purchaser does not disclose any *confidential client information* obtained in the course of the review.

.02 *Members* who perform such reviews should not use to their advantage or disclose any *confidential client information* that comes to their attention during the review. [Prior reference: paragraph .04 of ET section 301]

.03 *Members* who obtain *client* files as the result of acquiring all or part of another *member's* professional practice should not disclose any *confidential client information* contained in such files. *Members* should refer to the "Transfer of Files and Return of Client Records in Sale, Transfer Discontinuance or Acquisition of a Practice " interpretation under the "Acts Discreditable Rule" [1.400.205] for guidance related to *client* files obtained through acquiring a practice.

[See Revision History Table.]

1.700.060 Disclosure of Client Information to Third Parties

.01 When a *member* receives a request from a third party (for example, a trade association, member of academia, or surveying or benchmarking organization) to disclose *client*

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information or intends to use such information for the *member's* own purposes (for example, publication of benchmarking data or studies) in a manner that may result in the *client's* information being disclosed to others without the *client* being specifically identified, *threats* to compliance with the "Confidential Client Information Rule" [1.700.001] may exist.

.02 If the information is considered to be *confidential client information*, the *member* would be in violation of the "Confidential Client Information Rule" [1.700.001] if the *member* discloses or uses the information unless the *member* has the *client's* specific consent, preferably in writing, for the disclosure or use of such information. The consent should specify the nature of the information that may be disclosed, the type of third party to whom it may be disclosed, and its intended use.

.03 If the information is not considered to be *confidential client information*, the disclosure or use of the information is not subject to the "Confidential Client Information Rule" [1.700.001]. However, the *member* should be cautious in the disclosure or use of the information so as not to disclose *client* information that may go beyond what is available to the public or that the *client* has agreed may be disclosed.

.04 A *member* is not prohibited from marketing his or her services or advising a third party, such as a current or prospective *client*, of information based on his or her expertise or knowledge obtained from prior experiences with *clients* (for example, the nature of services provided to other *clients* or common practices within a *client's* industry). However, if the information may be identifiable to one or more *clients*, specific consent, preferably in writing, is required from such *client(s)*. Prior to disclosing *confidential client information* to a third party, the *member* should consider whether a contractual agreement with the third party to maintain the confidentiality or limit the use of the information is necessary.

.05 In addition, the *member* should consider whether federal, state, or local statutes, rules, or regulations concerning the confidentiality of *client* information may be more restrictive than the requirements in this interpretation.

.06 Refer to the "Use of a Third-Party Service Provider" interpretation [1.300.040] of the "General Standards Rule" [1.300.001] for additional guidance. [Prior reference: paragraphs .003–.004 of ET section 391]

A nonauthoritative table providing examples of client information that is available to the public, client information not available to the public, and other information in the member's possession is available at www.aicpa-cima.com/resources/download/categories-of-information.

1.700.070 Disclosing Client Information During Litigation

.01 The "Confidential Client Information Rule" [1.700.001] is not intended to prohibit a *member* from disclosing information necessary to initiate, pursue, or defend the *member* in

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an actual or a threatened lawsuit or alternative dispute resolution proceeding. Accordingly, releasing *confidential client information* to the *member's* liability insurance carrier solely to assist in the defense against an actual or a potential claim against the *member* would not violate the "Confidential Client Information Rule." [Prior reference: paragraphs .039–.040 and .045–.046 of ET section 391]

1.700.080 Disclosing Client Information in Director Positions

.01 When a *member* serves as a director of an organization, such as a bank or an insurance company, the *member's* fiduciary responsibilities to the organization may create *threats* to compliance with the "Integrity and Objectivity Rule" [1.100.001] and the "Confidential Client Information Rule" [1.700.001]. For example, the *member's* fiduciary duty to the organization may conflict with the *member's* obligations pursuant to the "Confidential Client Information Rule" (for example, failure to disclose information may constitute a breach of the director's fiduciary responsibilities) when the *member's clients* are customers of the organization.

.02 A *member's* general knowledge and experience may be very helpful to an organization in formulating a policy and making business decisions. Nevertheless, if the *member's clients* are likely to engage in significant transactions with the organization, it would be more appropriate for the *member* to serve as a consultant to the board. Under such an arrangement, the *member* could limit activities to those that do not *threaten* the *member's* compliance with the "Integrity and Objectivity Rule" [1.100.001] and the "Confidential Client Information Rule" [1.700.001]. If, however, the *member* serves as a board member of the organization, the *member* should evaluate the significance of any *threats* and apply *safeguards*, when necessary, to eliminate or reduce the *threats* to an *acceptable level*.

.03 See the "Director Positions" interpretation [1.110.020] of the "Integrity and Objectivity Rule" [1.100.001]. [Prior reference: paragraphs .035–.036 of ET section 391]

Effective Date

.04 The revisions to this interpretation are effective December 15, 2014.

1.700.090 Disclosing Client Names

.01 The *member's* disclosure of a *client's* name would not violate the "Confidential Client Information Rule" [1.700.001] if disclosure of the *client's* name does not constitute the release of *confidential client information*. For example, if a *member's* practice is limited to bankruptcy matters, disclosure of the *client's* name could suggest that the *client* may be experiencing financial difficulties, which may be *confidential client information*. [Prior reference: paragraphs .013–.014 of ET section 391]

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1.700.100 Disclosing Confidential Client Information as a Result of a Subpoena or Summons

.01 The *member's* disclosure of *confidential client information* in compliance with a validly issued and enforceable subpoena or summons would not violate the "Confidential Client Information Rule" [1.700.001].

.02 When complying with such subpoena or summons, the *member* is not required to notify the *client* that its records have been subpoenaed or that a summons related to the *client's* records has been issued. The *member* may also wish to consult with legal counsel to determine the validity and enforceability of the subpoena or summons and the specific *client* information required to be provided. The *member* may also wish to consult with his or her state board of accountancy. [No prior reference: New content from informal policy position]

Effective Date

.03 Effective December 15, 2014.

1.700.110 Disclosing Client Information in Connection With a Quality Review

.01 For purposes of the "Confidential Client Information Rule" [1.700.001], a review of a *member's* professional practice includes a quality review of a *member's* tax practice (for example, a voluntary tax practice review) performed under the monitoring function of the *member's* tax practice quality control policies and procedures. When a *member* uses a third party to perform such reviews of the *member's* tax practice, *threats* to compliance with the "Confidential Client Information Rule" may exist.

.02 To reduce the *threat* to an *acceptable level*, the *member* should, at a minimum, be satisfied that the *member* complies with the requirements of Treasury Regulation 301.7216-2(p) and any applicable state or local regulations related to disclosures of any federal, state, or local tax return information during such reviews. In addition, the *member* should be satisfied that the third-party reviewer is aware of and subject to the requirements of Treasury Regulation 301.7216-2(p) and any applicable state or local regulations. If the *member* determines that *threats* have not been reduced to an *acceptable level*, the *member* should apply additional *safeguards* to reduce the *threats* to an *acceptable level* (for example, enter into a written confidentiality agreement with the reviewer or de-identify tax return information provided to the reviewer).

.03 *Members* who perform such reviews should not use to their advantage or disclose any *confidential client information* that comes to their attention during the review. *Members* should refer to Treasury Regulation 301.7216-2(p) and any applicable state or local regulations for further guidance related to tax return information obtained during such reviews.

Effective Date

.04 This interpretation is effective December 31, 2018.

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[See Revision History Table.]

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1.800 Form of Organization and Name

1.800.001 Form of Organization and Name Rule

.01 A *member* may practice public accounting only in a form of organization permitted by law or regulation whose characteristics conform to resolutions of *Council*.

.02 A *member* shall not practice public accounting under a *firm* name that is misleading.

.03 Names of one or more past owners may be included in the *firm* name of a successor organization.

.04 A *firm* may not designate itself as "*Members* of the American Institute of Certified Public Accountants" unless all its CPA owners are *members* of the AICPA.

.05 See appendix B, "*Council* Resolution Concerning Form of Organization and Name." [Prior reference: paragraph .01 of ET section 505]

Interpretations Under the Form of Organization and Name Rule

1.800.005 Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Form of Organization and Name Rule" [1.800.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Public Practice" [1.000.010].

.02 A *member* would be considered in violation of the "Form of Organization and Name Rule" [1.800.001] if the *member* cannot demonstrate the application of *safeguards* that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [1.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015 and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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A nonauthoritative Conceptual Framework Toolkit for Members in Public Practice is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

1.810 Form of Organization and Related Practice Issues

1.810.010 Ownership of a Separate Business

.01 A *member* may own an interest in a separate business that performs for *clients* accounting, tax, personal financial planning, or litigation support services or other services for which standards are promulgated by bodies designated by *Council*.

.02 If the *member*, either individually or collectively with the *member's firm* or others in the *firm*, *controls* the separate business, then the separate business, its owners (including the *member*), and its professional employees must comply with the code. For example, if one or more *members* individually or collectively *control* the separate business, the *member(s)* and others associated with the separate business are subject to the "Commissions and Referral Fees Rule" [1.520.001] and its *interpretations*. With respect to an *attest client*, the "Independence Rule" [1.200.001] and its *interpretations* would apply to the activities of the separate business, its owners, and its professional employees.

.03 When the *member*, individually or collectively with the *member's firm* or others in the *firm*, does not *control* the separate business, the provisions of the code would apply to the *member's* actions but not to the separate business, its other (nonmember) owners, and its professional employees. For example, the separate business could enter into a contingent fee arrangement with the *member's attest client* or accept commissions for the referral of products or services to the *member's attest client*. [Prior reference: paragraph .03 of ET section 505]

.04 When the owners of the separate business are non-CPAs, to prevent any misunderstanding or misrepresentation, the CPA *member* should advise *clients* and other interested parties that the CPA *member* is an owner in two separate businesses: one made up of non-CPAs (except for the CPA *member*) and another that is a CPA *firm*. [Prior reference: paragraphs .275–.276 of ET section 591]

.05 See the "Network and Network Firms" interpretation [1.220.010] of the "Independence Rule" [1.200.001] and the definitions of *networks* and *network firms* for guidance applicable to these entities.

1.810.020 Partner Designation

.01 Only *members* of a *firm* who are legally *partners* should use the designation *partner*. *Members* who are not parties to the *firm's* partnership agreement should not hold themselves out in any manner that might lead *clients* or the public to believe that they

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are *partners*. For example, using the designation "nonproprietary partner" to describe a high-ranking professional employee would be misleading and in violation of the "Form of Organization and Name Rule" [1.800.001] even if the professional employee was a *partner* in one of the predecessor *firms* that merged into the *firm*. [Prior reference: paragraphs .273–.274 of ET section 591]

1.810.030 A Member's Responsibility for Nonmember Practitioners

.01 A *member* who becomes an employee of a *firm* made up of one or more nonmember practitioners must still comply with the code. If the *member* becomes an owner in the *firm*, the *member* will be responsible for *firm's* professional employees, including the nonmember practitioners.

.02 Similarly, if a *member* forms a partnership with a nonmember, the *member* is ethically responsible for all the activities of the partnership. If the nonmember *partner* violates the code, the *member* would be held accountable for that *partner's* actions.

.03 See paragraph .04 of the "Application of the AICPA Code" [0.200.020] section of the preface and appendix B. [Prior reference: paragraphs .005–.006 and .281–.282 of ET section 591]

1.810.040 Attest Engagement Performed With a Former Partner

.01 Unless there are laws, rules or regulations that are applicable to the *member* that conclude otherwise, two former *partners* may continue to jointly perform an *attest engagement* even if one of them is not a CPA. However, to be clear that a partnership no longer exists and to assure the *attest client* and others that both individuals performed the *attest engagement*, they should present their report on plain paper (that is, paper with no letterhead) that is signed in the following manner:

> John Doe, Certified Public Accountant
>
> Richard Roe, Accountant

[Prior reference: paragraphs .271–.272 of ET section 591]

Effective Date

.02 The revisions to this interpretation are effective December 15, 2014.

1.810.050 Alternative Practice Structures

.01 The "Form of Organization and Name Rule" [1.800.001] states, "A *member* may practice public accounting only in a form of organization permitted by law or regulation whose characteristics conform to resolutions of *Council*." The *Council* resolution (appendix B) requires, among other things, that CPAs own a majority of the *financial interests* in a *firm* engaged to provide attest services (as defined therein) to the public. This interpretation explains the application of this rule to an alternative practice structure (APS) in which (*a*) the majority of the *financial interests* in the attest *firm* is owned by CPAs and (*b*) all or

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substantially all of the revenues are paid to another entity in return for services and the lease of employees, equipment, and *office* space.

.02 To protect the public interest, the overriding focus of the resolution is that CPAs remain responsible, financially and otherwise, for a *firm's* attest work. In addition to the provisions of the resolution, other requirements of the code and bylaws ensure responsibility for

a. compliance with all aspects of applicable law or regulation,

b. enrollment in an AICPA-approved practice monitoring program,

c. compliance with the "Independence Rule" [1.200.001], and

d. compliance with applicable standards promulgated by *Council*-designated bodies ("Compliance With Standards Rule" [1.310.001]) and all other provisions of the code, including "Structure and Application of the AICPA Code" [0.200].

.03 Given all the previously mentioned *safeguards* that protect the public interest, if the CPAs who own the attest *firm* remain financially responsible, under applicable law or regulation, for the *firm's* attest work, the *member* is considered to be in compliance with the financial interests provision of the resolution. [Prior reference: paragraph .04 of ET section 505]

1.820 Firm Name

1.820.010 Use of a Retired Partner's Name

.01 The "Form of Organization and Name Rule" [1.800.001] permits the use of the name(s) of former *partner(s)* in a *firm's* name. For example, if two *firms* merge, the newly formed *firm* may use in its *firm* name the name of retired or other *partners* in either or both of the merged *firms* without violating the "Form of Organization and Name Rule." [Prior reference: paragraphs .289–.290 of ET section 591]

1.820.020 A Practice With Non-CPA Partners

.01 Unless there are laws, rules, or regulations that are applicable to the *member* that conclude otherwise, a CPA *member* who is in a partnership with non-CPAs may sign reports in the *firm's* name and also affix the designation, "Certified Public Accountant," to the *member's* signature if it is clear that the partnership itself is not being held out as entirely comprising CPAs. [Prior reference: paragraphs .379–.380 of ET section 591]

1.820.030 Misleading Firm Names

.01 The "Form of Organization and Name Rule" [1.800.001] prohibits a *member* from practicing public accounting under a *firm* name that is misleading. If the *firm* name contains any representation that would be likely to cause a reasonable person to misunderstand, or be confused about, what the legal form of the *firm* is or who the owners or members of the *firm* are, the *firm* name would be misleading and the *member* would be in violation of the "Form of Organization and Name Rule." For example, the *member* should not

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refer to a type of organization or an abbreviation thereof that does not accurately reflect the form under which the *firm* is organized.

.02 In addition, the *member* should consider the rules and regulations of his or her state board(s) of accountancy concerning misleading *firm* names that may be more restrictive than the requirements in this interpretation. [Prior reference: paragraph .05 of ET section 505]

1.820.040 Use of a Common Brand Name in Firm Name

.01 *Firms* within a *network* sometimes share the use of a common brand or share common initials as part of the *firm* name. The sharing of a common brand name or common initials of a *network* as part of the *member's firm* name would not be considered misleading, provided the *firm* is a *network firm.*

.02 The sharing of a common brand name or common initials of a *network* as the entire name of the *member's firm* would not be considered misleading, if the *firm* is a *network firm* and shares one or more of the following characteristics with other *firms* in the *network*:

a. Common *control* among the firms through ownership, management, or other means

b. Profits or costs, excluding costs of operating the *network*; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the *firm*

c. Common business strategy that involves ongoing collaboration amongst the *firms* whereby the *firms* are responsible for implementing the *network's* strategy and are held accountable for performance pursuant to that strategy

d. Significant part of professional resources

e. Common quality management policies and procedures that *firms* are required to implement and that are monitored by the *network*

.03 Refer to the "Network and Network Firms" interpretation [1.220.010] of the "Independence Rule" [1.200.001] for additional guidance. [Prior reference: paragraph .06 of ET section 505]

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Part 2

Members in Business

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2.000 Introduction

.01 Part 2 of the Code of Professional Conduct (the code) applies to *members in business*. Accordingly, when the term *member* is used in part 2 of the code, the requirements apply only to *members in business*. When a *member in business* is also a *member* in *public practice* (for example, a *member* has a part-time tax practice), the *member* should also consult part 1 of the code, which applies to *members* in *public practice*. [No prior reference: new content]

Effective Date

.02 Effective December 15, 2014.

2.000.010 Conceptual Framework for Members in Business

Introduction

.01 *Members* may encounter various relationships or circumstances that create *threats* to the *member's* compliance with the rules. The rules and *interpretations* seek to address many situations; however, they cannot address all relationships or circumstances that may arise. Thus, in the absence of an *interpretation* that addresses a particular relationship or circumstance, a *member* should evaluate whether that relationship or circumstance would lead a reasonable and informed third party who is aware of the relevant information to conclude that there is a *threat* to the *member's* compliance with the rules that is not at an *acceptable level*. When making that evaluation, the *member* should apply the conceptual framework approach as outlined in this interpretation.

.02 The code specifies that in some circumstances, no *safeguards* can reduce a *threat* to an *acceptable level*. For example, the code specifies that a *member* may not subordinate the *member's* professional judgment to others without violating the "Integrity and Objectivity Rule" [2.100.001]. A *member* may not use the conceptual framework to overcome this or any other prohibition or requirement in the code.

Definitions Used in Applying the Conceptual Framework

.03 Acceptable level. A level at which a reasonable and informed third party who is aware of the relevant information would be expected to conclude that a *member's* compliance with the rules is not compromised.

.04 Safeguards. Actions or other measures that may eliminate a *threat* or reduce a *threat* to an *acceptable level*.

.05 Threat(s). Relationships or circumstances that could compromise a *member's* compliance with the rules.

Conceptual Framework Approach

.06 Under the conceptual framework approach, *members* should identify *threats* to compliance with the rules and evaluate the significance of those *threats*. *Members* should

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evaluate identified *threats* both individually and in the aggregate because *threats* can have a cumulative effect on a *member's* compliance with the rules. *Members* should perform three main steps in applying the conceptual framework approach:

a. *Identify threats*. The relationships or circumstances that a *member* encounters in various engagements and work assignments or positions will often create different *threats* to complying with the rules. When a *member* encounters a relationship or circumstance that is not specifically addressed by a rule or an *interpretation*, under this approach, the *member* should determine whether the relationship or circumstance creates one or more *threats*, such as those identified in paragraphs .09–.14 that follow. The existence of a *threat* does not mean that the *member* is in violation of the rules; however, the *member* should evaluate the significance of the *threat*.

b. *Evaluate the significance of a threat.* In evaluating the significance of an identified *threat*, the *member* should determine whether a *threat* is at an *acceptable level*. A *threat* is at an *acceptable level* when a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the *threat* would not compromise the *member's* compliance with the rules. *Members* should consider both qualitative and quantitative factors when evaluating the significance of a *threat*, including the extent to which existing *safeguards* already reduce the *threat* to an *acceptable level*. If the *member* evaluates the *threat* and concludes that a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the *threat* does not compromise a *member's* compliance with the rules, the *threat* is at an *acceptable level* and the *member* is not required to evaluate the *threat* any further under this conceptual framework approach.

c. *Identify and apply safeguards*. If, in evaluating the significance of an identified *threat*, the *member* concludes that the *threat* is not at an *acceptable level*, the *member* should apply *safeguards* to eliminate the *threat* or reduce it to an *acceptable level*. The *member* should apply judgment in determining the nature of the *safeguards* to be applied because the effectiveness of *safeguards* will vary depending on the circumstances. When identifying appropriate *safeguards* to apply, one *safeguard* may eliminate or reduce multiple *threats*. In some cases, the *member* should apply multiple *safeguards* to eliminate or reduce one *threat* to an *acceptable level*. In other cases, an identified *threat* may be so significant that no *safeguards* will eliminate the *threat* or reduce it to an *acceptable level*, or the *member* will be unable to implement effective *safeguards*. Under such circumstances, providing the specific *professional services* would compromise the *member's* compliance with the rules, and the *member* should determine whether to decline or discontinue the *professional services* or resign from the *employing organization*.

Threats

.07 Many *threats* fall into one or more of the following six broad categories: adverse interest, advocacy, familiarity, self-interest, self-review, and undue influence.

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.08 Examples of *threats* associated with a specific relationship or circumstance are identified in the *interpretations* of the code. Paragraphs .09–.14 of this section define and provide examples, which are not all inclusive, of each of these *threat* categories.

.09 *Adverse interest threat.* The *threat* that a *member* will not act with objectivity because the *member's* interests are opposed to the interests of the *employing organization*. Examples of adverse interest *threats* include the following:

a. A *member* has charged, or expressed an intention to charge, the *employing organization* with violations of law.

b. A *member* or the *member's immediate family* or *close relative* has a financial or another relationship with a vendor, customer, competitor, or potential acquisition of the *employing organization*.

c. A *member* has sued or expressed an intention to sue the *employing organization* or its officers, directors, or employees.

.10 *Advocacy threat.* The *threat* that a *member* will promote an *employing organization's* interests or position to the point that his or her objectivity is compromised. Examples of advocacy *threats* include the following:

a. Obtaining favorable financing or additional capital is dependent upon the information that the *member* includes in, or excludes from, a prospectus, an offering, a business plan, a financing application, or a regulatory filing.

b. The *member* gives or fails to give information that the *member* knows will unduly influence the conclusions reached by an external service provider or other third party.

.11 *Familiarity threat.* The *threat* that, due to a long or close relationship with a person or an *employing organization*, a *member* will become too sympathetic to their interests or too accepting of the person's work or *employing organization's* product or service. Examples of familiarity *threats* include the following:

a. A *member* uses an *immediate family's* or a *close relative's* company as a supplier to the *employing organization*.

b. A *member* may accept an individual's work product with little or no review because the individual has been producing an acceptable work product for an extended period of time.

c. A *member's immediate family* or *close relative* is employed as a *member's* subordinate.

d. A *member* regularly accepts gifts or entertainment from a vendor or customer of the *employing organization*.

.12 *Self-interest threat.* The *threat* that a *member* could benefit, financially or otherwise, from an interest in, or relationship with, the *employing organization* or persons associated with the *employing organization*. Examples of self-interest *threats* include the following:

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a. A *member's immediate family* or *close relative* has a *financial interest* in the *employing organization*.

b. A *member* holds a *financial interest* (for example, shares or share options) in the *employing organization*, and the value of that *financial interest* is directly affected by the *member's* decisions.

c. A *member* is eligible for a profit or other performance-related bonus, and the value of that bonus is directly affected by the *member's* decisions.

.13 *Self-review threat.* The *threat* that a *member* will not appropriately evaluate the results of a previous judgment made or service performed or supervised by the *member*, or an individual in the *employing organization* and that the *member* will rely on that service in forming a judgment as part of another service. Examples of self-review *threats* include the following:

a. When performing an internal audit procedure, an internal auditor accepts work that he or she previously performed in a different position.

b. The *member* accepts the work previously performed by the *member*, alone or with others, that will be the basis for providing another *professional service*.

.14 *Undue influence threat.* The *threat* that a *member* will subordinate his or her judgment to that of an individual associated with the *employing organization* or any relevant third party due to that individual's position, reputation or expertise, aggressive or dominant personality, or attempts to coerce or exercise excessive influence over the *member*. Examples of undue influence *threats* include the following:

a. A *member* is pressured to become associated with misleading information.

b. A *member* is pressured to deviate from a company policy.

c. A *member* is pressured to change a conclusion regarding an accounting or a tax position.

d. A *member* is pressured to hire an unqualified individual.

Safeguards

.15 *Safeguards* may partially or completely eliminate a *threat* or diminish the potential influence of a *threat*. The nature and extent of the *safeguards* applied will depend on many factors. To be effective, *safeguards* should eliminate the *threat* or reduce it to an *acceptable level*.

.16 *Safeguards* that may eliminate a *threat* or reduce it to an *acceptable level* fall into two broad categories:

a. *Safeguards* created by the profession, legislation, or regulation

b. *Safeguards* implemented by the *employing organization*

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.17 The effectiveness of a *safeguard* depends on many factors, including those listed here:

a. The facts and circumstances specific to a particular situation

b. The proper identification of *threats*

c. Whether the *safeguard* is suitably designed to meet its objectives

d. The party(ies) who will be subject to the *safeguard*

e. How the *safeguard* is applied

f. The consistency with which the *safeguard* is applied

g. Who applies the *safeguard*

h. How the *safeguard* interacts with a *safeguard* from another category

i. Whether the *employing organization* is a *public interest entity*

.18 Examples of *safeguards* within each category are presented in the following paragraphs. Because these are only examples and are not intended to be all inclusive, it is possible that *threats* may be sufficiently mitigated through the application of other *safeguards* not specifically identified herein.

.19 The following are examples of *safeguards* created by the profession, legislation, or regulation:

a. Education and training requirements on ethics and professional responsibilities

b. Continuing education requirements on ethics

c. Professional standards and the threat of discipline

d. Legislation establishing prohibitions and requirements for entities and employees

e. Competency and experience requirements for professional licensure

f. Professional resources, such as hotlines, for consultation on ethical issues

.20 Examples of *safeguards* implemented by the *employing organization* are as follows:

a. A tone at the top emphasizing a commitment to fair financial reporting and compliance with applicable laws, rules, regulations, and corporate governance policies

b. Policies and procedures addressing ethical conduct and compliance with laws, rules, and regulations

c. Audit committee charter, including independent audit committee members

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d. Internal policies and procedures requiring disclosure of identified interests or relationships among the *employing organization*, its directors or officers, and vendors, suppliers, or customers

e. Internal policies and procedures related to purchasing controls

f. Internal policies and procedures related to customer acceptance or credit limits

g. Dissemination of corporate ethical compliance policies and procedures, including whistle-blower hotlines, the reporting structure, dispute resolution, or other similar policies, to promote compliance with laws, rules, regulations, and other professional requirements

h. Human resource policies and procedures *safeguarding* against discrimination or harassment, such as those concerning a worker's religion, sexual orientation, gender, or disability

i. Human resource policies and procedures stressing the hiring and retention of technically competent employees

j. Policies and procedures for implementing and monitoring ethical policies

k. Assigning sufficient staff with the necessary competencies to projects and other tasks

l. Policies segregating personal assets from company assets

m. Staff training on applicable laws, rules, and regulations

n. Regular monitoring of internal policies and procedures

o. A reporting structure whereby the internal auditor does not report to the financial reporting group

p. Policies and procedures that do not allow an internal auditor to monitor areas where the internal auditor has operational or functional responsibilities

q. Policies for promotion, rewards, and enforcement of a culture of high ethics and integrity

r. Use of third-party resources for consultation as needed on significant matters of professional judgment [No prior reference: new content]

Effective Date

.21 Effective December 15, 2015. Early implementation is allowed provided the *member* has implemented the revised code.

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2.000.020 Ethical Conflicts

.01 An ethical conflict arises when a *member* encounters one or both of the following:

a. Obstacles to following an appropriate course of action due to internal or external pressures

b. Conflicts in applying relevant professional and legal standards.

.02 Once an ethical conflict is encountered, a *member* may be required to take steps to best achieve compliance with the rules and law. In weighing alternative courses of action, the *member* should consider factors such as the following:

a. Relevant facts and circumstances, including applicable rules, laws, or regulations

b. Ethical issues involved

c. Established internal procedures

.03 The *member* should also be prepared to justify any departures that the *member* believes were appropriate in applying the relevant rules and law. If the *member* was unable to resolve the conflict in a way that permitted compliance with the applicable rules and law, the *member* may have to address the consequences of any violations.

.04 Before pursuing a course of action, the *member* should consider consulting with appropriate persons within the organization that employs the *member*.

.05 If a *member* decides not to consult with appropriate persons within the organization that employs the *member*, and the conflict remains unresolved after pursuing the selected course of action, the *member* should consider either consulting with other individuals for help in reaching a resolution or obtaining advice from an appropriate professional body or legal counsel. The *member* also should consider documenting the substance of the issue, the parties with whom the issue was discussed, details of any discussions held, and any decisions made concerning the issue.

.06 If the ethical conflict remains unresolved, the *member* will in all likelihood be in violation of one or more rules if he or she remains associated with the matter creating the conflict. Accordingly, the *member* should consider his or her continuing relationship with the specific assignment or employer. [No prior reference: new content]

.07 Refer to the "Responding to Noncompliance With Laws and Regulations" interpretation [2.180.010] of the "Integrity and Objectivity Rule" [2.100.001] for additional guidance.

Effective Date

.08 Effective December 15, 2014.

[See Revision History Table.]

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2.100 Integrity and Objectivity

2.100.001 Integrity and Objectivity Rule

.01 In the performance of any *professional service*, a *member* shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others. [Prior reference: paragraph .01 of ET section 102]

Interpretations Under the Integrity and Objectivity Rule

2.100.005 Application of the Conceptual Framework for Members in Business and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Integrity and Objectivity Rule" [2.100.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Business" [2.000.010].

.02 A *member* would be considered in violation of the "Integrity and Objectivity Rule" [2.100.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [2.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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2.110 Conflicts of Interest

2.110.010 Conflicts of Interest for Members in Business

.01 A *member* may be faced with a conflict of interest when undertaking a *professional service*. In determining whether a *professional service*, relationship, or matter would result

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in a conflict of interest, a *member* should use professional judgment, taking into account whether a reasonable and informed third party who is aware of the relevant information would conclude that a conflict of interest exists.

.02 A conflict of interest creates adverse interest and self-interest *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [2.100.001]. For example, *threats* may be created when

a. a *member* undertakes a *professional service* related to a particular matter involving two or more parties whose interests with respect to that matter are in conflict, or

b. the interests of a *member* with respect to a particular matter and the interests of a party for whom the *member* undertakes a *professional service* related to that matter are in conflict.

.03 A party may include an *employing organization*, a vendor, a customer, a lender, a shareholder, or other party.

.04 The following are examples of situations in which conflicts of interest may arise:

a. Serving in a management or governance position for two *employing organizations* and acquiring confidential information from one *employing organization* that could be used by the *member* to the advantage or disadvantage of the other *employing organization*

b. Undertaking a *professional service* for each of two parties in a partnership employing the *member* to assist in dissolving their partnership

c. Preparing financial information for certain *members* of management of the *employing organization* who are seeking to undertake a management buy-out

d. Being responsible for selecting a vendor for the *member's employing organization* when the *member* or his or her *immediate family* member could benefit financially from the transaction

e. Serving in a governance capacity or influencing an *employing organization* that is approving certain investments for the company in which one of those specific investments will increase the value of the personal investment portfolio of the *member* or his or her *immediate family* member

Identification of a Conflict of Interest

.05 In identifying whether a conflict of interest exists or may be created, a *member* should take reasonable steps to determine

a. the nature of the relevant interests and relationships between the parties involved and

b. the nature of the services and its implication for relevant parties.

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.06 The nature of the relevant interests and relationships and the services may change over time. The *member* should remain alert to such changes for the purposes of identifying circumstances that might create a conflict of interest.

Evaluation of a Conflict of Interest

.07 When an actual conflict of interest has been identified, the *member* should evaluate the significance of the *threat* created by the conflict of interest to determine if the *threat* is at an *acceptable level*. *Members* should consider both qualitative and quantitative factors when evaluating the significance of the *threat*, including the extent to which existing *safeguards* already reduce the *threat* to an *acceptable level*.

.08 In evaluating the significance of an identified *threat*, *members* should consider the following:

a. The significance of relevant interests or relationships.

b. The significance of the *threats* created by undertaking the *professional service* or services. In general, the more direct the connection between the *member* and the matter on which the parties' interests are in conflict, the more significant the *threat* to compliance with the rule will be.

.09 If the *member* concludes that the *threat* is not at an *acceptable level*, the *member* should apply *safeguards* to eliminate the *threat* or reduce it to an *acceptable level*. Examples of *safeguards* include the following:

a. Restructuring or segregating certain responsibilities and duties

b. Obtaining appropriate oversight

c. Withdrawing from the decision making process related to the matter giving rise to the conflict of interest

d. Consulting with third parties, such as a professional body, legal counsel, or another professional accountant

.10 In cases where an identified *threat* may be so significant that no *safeguards* will eliminate the *threat* or reduce it to an *acceptable level*, or the *member* is unable to implement effective *safeguards*, the *member* should (*a*) decline to perform or discontinue the *professional services* that would result in the conflict of interest; or (*b*) terminate the relevant relationships or dispose of the relevant interests to eliminate the *threat* or reduce it to an *acceptable level.*

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Business is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

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Disclosure of a Conflict of Interest and Consent

.11 When a conflict of interest exists, the *member* should disclose the nature of the conflict to the relevant parties, including to the appropriate levels within the *employing organization* and obtain their consent to undertake the *professional service*. The *member* should disclose the conflict of interest and obtain consent even if the *member* concludes that *threats* are at an *acceptable level*.

.12 The *member* is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the *safeguards* applied to eliminate or reduce the *threats* to an *acceptable level*, and the consent obtained.

.13 When addressing a conflict of interest, a *member* is encouraged to seek guidance from within the *employing organization* or from others, such as a professional body, legal counsel, or another professional accountant. When making disclosures and seeking guidance of third parties, the *member* should remain alert to the requirements of the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [2.400.070] of the "Acts Discreditable Rule" [2.400.001]. In addition, federal, state, or local statutes, or regulations concerning confidentiality of employer information may be more restrictive than the requirements contained in the Code of Professional Conduct.

.14 A *member* may encounter other *threats* to compliance with the "Integrity and Objectivity Rule" [2.100.001]. This may occur, for example, when preparing or reporting financial information as a result of undue pressure from others within the *employing organization* or financial, business or personal relationships that *close relatives* or *immediate family* members of the *member* have with the *employing organization*. Guidance on managing such *threats* is covered by the "Knowing Misrepresentations in the Preparation of Financial Statements or Records" interpretation [2.130.010] and the "Subordination of Judgment" interpretation [2.130.020] under the "Integrity and Objectivity Rule."

[See Revision History Table.]

2.120 Gifts and Entertainment

2.120.010 Offering or Accepting Gifts or Entertainment

.01 For purposes of this interpretation, a customer or vendor of the *member's* employer includes a representative of the customer or vendor.

.02 When a *member* offers to, or accepts gifts or entertainment from, a customer or vendor of the *member's* employer, self-interest, familiarity, or undue influence *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [2.100.001] may exist.

.03 *Threats* to compliance with the "Integrity and Objectivity Rule" [2.100.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and the *member* would be presumed to lack integrity in violation of the "Integrity and Objectivity Rule" in the following circumstances:

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a. The *member* offers to, or accepts gifts or entertainment from, a customer or vendor of the *member's* employer that violate applicable laws, rules, or regulations or the policies of the member's employer or the customer or vendor.

b. The member knows of the violation or demonstrates recklessness in not knowing.

.04 A *member* should evaluate the significance of any *threats* to determine if they are at an *acceptable level*. *Threats* are at an *acceptable level* when gifts or entertainment are reasonable in the circumstances. The *member* should exercise judgment in determining whether gifts or entertainment would be considered reasonable in the circumstances. The following are examples of relevant facts and circumstances:

a. The nature of the gift or entertainment

b. The occasion giving rise to the gift or entertainment

c. The cost or value of the gift or entertainment

d. The nature, frequency, and value of other gifts and entertainment offered or accepted

e. Whether the entertainment was associated with the active conduct of business directly before, during, or after the entertainment

f. Whether other customers or vendors also participated in the entertainment

g. The individuals from the customer or vendor and a *member's* employer who participated in the entertainment

.05 *Threats* to compliance with the "Integrity and Objectivity Rule" [2.100.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* through the application of *safeguards* if a *member* offers to, or accepts gifts or entertainment from, a customer or vendor of the *member's* employer that is not reasonable in the circumstances. The *member* would be considered to lack objectivity in violation of the "Integrity and Objectivity Rule," under these circumstances. [Prior reference: paragraphs .226–.227 of ET section 191]

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A nonauthoritative basis-for-conclusions document summarizing considerations that were deemed significant in the development of this interpretation is available. See "Background and Basis for Conclusions: New Ethics Rulings Under Rule 102 — Integrity and Objectivity and Rule 101 — IndependenceBackground and Basis for Conclusions: New Ethics Rulings Under Rule 102 — Integrity and Objectivity and Rule 101 — Independence" in *Basis for Conclusions Documents*.

A nonauthoritative practice aid is available at www.aicpa-cima.com/resources/download/practice-aid-understanding-circumstances-that-may-compromise-your-integrity-and-objectivity.

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Business is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

2.130 Preparing and Reporting Information

2.130.010 Knowing Misrepresentations in the Preparation and Presentation of Information

.01 *Members* at all levels in an *employing organization* may be involved in the preparation and presentation of information for use both within and outside the *employing organization*. Stakeholders for whom such information is prepared or presented include the following:

a. Management and *those charged with governance*

b. Investors, lenders, and other creditors

c. Regulators

.02 This information may assist stakeholders in understanding and evaluating aspects of the *employing organization's* operations and finances and in making decisions concerning the *employing organization*. This includes financial and non-financial information that may be made public or used for internal purposes such as the following:

a. Operating and performance reports

b. Decision support analyses

c. Budgets and forecasts

d. Information provided to the internal and external auditors

e. Risk analyses

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f. General and special purpose *financial statements*

g. Tax returns

h. Reports filed with regulators for legal and compliance purposes

.03 *Members* who are responsible for recording, maintaining, preparing, approving, or presenting information should do so in accordance with the "Integrity and Objectivity Rule" [2.100.001] as follows:

a. Presenting the information in accordance with a relevant reporting framework, where applicable

b. Preparing or presenting information in a manner that is intended not to mislead, including not to influence contractual or regulatory outcomes inappropriately

c. Preparing or presenting information without omissions that would render the information misleading

.04 This responsibility involves using professional judgment in the following:

a. Representing the facts accurately and completely in all material respects

b. Describing clearly the true nature of business transactions or activities

c. Classifying and recording information in a timely and proper manner

Preparation and Presentation of Financial Statements and Records

.05 *Threats* to compliance with the "Integrity and Objectivity Rule" [2.100.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and the *member* would be considered to have knowingly misrepresented facts in violation of the "Integrity and Objectivity Rule," if the *member*

a. makes, or permits or directs another to make, materially false and misleading entries in an entity's *financial statements* or records;

b. fails to correct an entity's *financial statements* or records that are materially false and misleading when the *member* has the authority to record the entries; or

c. signs, or permits or directs another to sign, a document containing materially false and misleading information. [Prior reference: paragraph .02 of ET section 102]

.06 Preparing or presenting information may require the exercise of discretion in making professional judgments. Preparing or presenting such information in compliance with the "Integrity and Objectivity Rule" [2.100.001] requires the *member* not to exercise such discretion with the intention of misleading.

Preparation and Presentation of Information Not Subject to a Reporting Framework

.07 When performing professional activities, especially those that do not require compliance with a relevant reporting framework, the *member* should use professional judgment to

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identify and take into account the purpose for which the information is to be used, the context in which it is provided, and the audience to whom it is addressed. For example, when preparing or presenting pro forma reports, budgets, or forecasts, the inclusion of relevant estimates, approximations, and assumptions, where appropriate, would enable those who may rely on such information to form their own judgments. The *member* may also consider clarifying the intended audience, context, and purpose of the information presented.

Reliance on the Work of Others

.08 A *member* who intends to rely on the work of others, either internal or external to the organization, should use professional judgment to determine what steps to take, if any, to ensure that the requirements set out in paragraphs .03, .04, and .05 are fulfilled. Factors to consider in determining whether reliance on others is reasonable include reputation, expertise, objectivity, resources available to the individual or organization, and whether the other individual is subject to applicable professional and ethical standards. Such information may be gained from prior association with, or from consulting others about, the individual or the organization.

Association With Misleading Information

.09 If the *member* knows or has reason to believe that the information with which he or she is associated is misleading, the *member* should apply appropriate *safeguards* to seek to resolve the matter, including the following:

a. Consulting the *employing organization's* policies and procedures (for example, an ethics or whistleblowing policy) regarding how such matters should be addressed internally

b. Discussing concerns that the information is misleading with the *member's* supervisor or the appropriate levels of management within the *member's employing organization* or *those charged with governance* and requesting such individuals to take appropriate action to resolve the matter. Such action may include the following:

    i. Having the information corrected

    ii. If the information has already been disclosed to the intended users, informing them of the correct information

.10 If the *member* determines that appropriate action has not been taken and continues to have reason to believe that the information is misleading, *threats* to compliance with the "Integrity and Objectivity Rule" [2.100.001] would not be at an *acceptable level*. In such circumstances, the *member*, being alert to the requirements of the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [2.400.070], should consider one or more of the following *safeguards*:

a. Consulting with a relevant professional body

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b. Consulting with the *employing organization's* internal auditor and external accountant

c. Determining whether any requirements exist to communicate to third parties, including users of the information, the organization's external accountant, or regulatory authorities

d. Consulting legal counsel regarding his or her responsibilities

.11 If, after exhausting all feasible options, the *member* determines that appropriate action has not been taken and there is reason to believe that the information is still misleading, the *member* should refuse to be or to remain associated with the information. The *member* also should consider whether to continue a relationship with the *employing organization*.

.12 Nothing in this interpretation precludes a *member* from resigning from the organization at any time. However, resignation may not relieve the *member* of responsibilities in the situation, including any responsibility to disclose concerns to third parties, such as regulatory authorities or the *employing organization's* (or former *employing organization's*) external accountant.

.13 The *member* is also encouraged to document his or her understanding of the facts, the accounting principles or other relevant professional standards involved, and the communications and parties with whom these matters were discussed, the courses of action considered, and how the *member* attempted to address the matter.

.14 When *threats* to compliance with the "Integrity and Objectivity Rule" [2.100.001] are due to differences of opinion between a *member* and his or her supervisor (or any other person within the *member's* organization) relating to the application of accounting principles, auditing standards, or other relevant professional standards, the *member* should also refer to the "Subordination of Judgment" interpretation [2.130.020].

[See Revision History Table]

2.130.020 Subordination of Judgment

.01 The "Integrity and Objectivity Rule" [2.100.001] prohibits a *member* from knowingly misrepresenting facts or subordinating his or her judgment when performing *professional services* for an employer or on a volunteer basis. This interpretation addresses differences of opinion between a *member* and his or her supervisor or any other person within the *member's* organization.

.02 Self-interest, familiarity, and undue influence *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [2.100.001] may exist when a *member* and his or her supervisor or any other person within the *member's* organization have a difference of opinion relating to the application of accounting principles; auditing standards; or other relevant professional standards, including standards applicable to tax and consulting services or applicable laws or regulations.

.03 A *member* should evaluate the significance of any *threats* to determine if they are at an *acceptable level*. *Threats* are at an *acceptable level* if the *member* concludes that the position

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taken does not result in a material misrepresentation of fact or a violation of applicable laws or regulations. If *threats* are not at an *acceptable level*, the *member* should apply the *safeguards* in paragraphs .06–.08 to eliminate or reduce the *threat(s)* to an *acceptable level* so that the *member* does not subordinate his or her judgment.

.04 In evaluating the significance of any identified *threats*, the *member* should determine, after appropriate research or consultation, whether the result of the position taken by the supervisor or other person

a. fails to comply with professional standards, when applicable;

b. creates a material misrepresentation of fact; or

c. may violate applicable laws or regulations.

.05 If the *member* concludes that *threats* are at an *acceptable level*, the *member* should discuss his or her conclusions with the person taking the position. No further action would be needed under this interpretation.

.06 If the *member* concludes that the position results in a material misrepresentation of fact or a violation of applicable laws or regulations, then *threats* would not be at an *acceptable level*. In such circumstances, the *member* should discuss his or her concerns with the supervisor.

.07 If the difference of opinion is not resolved after discussing the concerns with the supervisor, the *member* should discuss his or her concerns with the appropriate higher level(s) of management within the *member's* organization (for example, the supervisor's immediate superior, senior management, and *those charged with governance*).

.08 If after discussing the concerns with the supervisor and appropriate higher level(s) of management within the *member's* organization, the *member* concludes that appropriate action was not taken, then the *member* should consider, in no specific order, the following *safeguards* to ensure that *threats* to the *member's* compliance with the "Integrity and Objectivity Rule" [2.100.001] are eliminated or reduced to an *acceptable level*:

a. Determine whether the organization's internal policies and procedures have any additional requirements for reporting differences of opinion.

b. Determine whether he or she is responsible for communicating to third parties, such as regulatory authorities or the organization's (former organization's) external accountant. In considering such communications, the *member* should be cognizant of his or her obligations under the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [2.400.070] of the "Acts Discreditable Rule" [2.400.001] and the "Obligation of a Member to His or Her Employer's External Accountant" interpretation [2.130.030] of the "Integrity and Objectivity Rule" [2.100.001].

c. Consult with his or her legal counsel regarding his or her responsibilities.

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d. Document his or her understanding of the facts, the accounting principles, auditing standards, or other relevant professional standards involved or applicable laws or regulations and the conversations and parties with whom these matters were discussed.

.09 If the *member* concludes that no *safeguards* can eliminate or reduce the *threats* to an *acceptable level* or if the *member* concludes that appropriate action was not taken, then he or she should consider the continuing relationship with the *member's* organization and take appropriate steps to eliminate his or her exposure to subordination of judgment.

.10 Nothing in this interpretation precludes a *member* from resigning from the organization at any time. However, resignation may not relieve the *member* of responsibilities in the situation, including any responsibility to disclose concerns to third parties, such as regulatory authorities or the employer's (former employer's) external accountant.

.11 A *member* should use professional judgment and apply similar *safeguards*, as appropriate, to other situations involving a difference of opinion as described in this interpretation so that the *member* does not subordinate his or her judgment. [Prior reference: paragraph .05 of ET section 102]

2.130.030 Obligation of a Member to His or Her Employer's External Accountant

.01 The "Integrity and Objectivity Rule" [2.100.001] requires a *member* to maintain objectivity and integrity in the performance of a *professional service*. When dealing with an employer's external accountant, a *member* must be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts. This would include, for example, responding to specific inquiries for which the employer's external accountant requests written representation. [Prior reference: paragraph .04 of ET section 102]

2.160 Educational Services

2.160.010 Educational Services

.01 *Members* who perform educational services, such as teaching full or part time at a university, teaching a continuing professional education course, or engaging in research and scholarship, are performing *professional services* and, therefore, are subject to the "Integrity and Objectivity Rule" [2.100.001]. [Prior reference: paragraph .06 of ET section 102]

2.170 Pressure to Breach the Rules

2.170.010 Pressure to Breach the Rules

.01 This interpretation addresses pressures that could result in a *member* taking actions that breach or cause others to breach the rules, particularly the "Integrity and Objectivity Rule" [2.100.001].

.02 A *member* may face pressure that could create *threats*, for example undue influence *threats*, to compliance with the "Integrity and Objectivity Rule" [2.100.001] when

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undertaking a *professional service*. Pressure may be explicit or implicit. Pressure may come from within the *employing organization*, for example, from a colleague or superior, from an external individual or organization such as a vendor, customer or lender, or from the need to meet internal or external targets and expectations.

.03 A *member* should not allow pressure from others to result in a breach of the "Integrity and Objectivity Rule" [2.100.001]. A *member* also should not place pressure on others that the *member* knows, or has reason to believe, would result in the other individuals breaching the rules of the AICPA Code of Professional Conduct.

.04 Examples of pressure that could result in a breach of the "Integrity and Objectivity Rule" [2.100.001] include the following:

a. Pressure related to conflicts of interest, for example, pressure from a family member bidding to act as a vendor to the *member's employing organization* to select that vendor over another prospective vendor

   Refer to the "Conflicts of Interest for Members in Business" interpretation [2.110.010] for additional guidance.

b. Pressure to influence presentation of information:

   i. Pressure to report misleading financial results to meet investor, analyst, or lender expectations.

   ii. Pressure from elected officials on government accountants to misrepresent programs or projects to voters.

   iii. Pressure from colleagues to misstate income, expenditure, or rates of return to bias decision-making on capital projects and acquisitions.

   iv. Pressure from superiors to approve or process expenditures that are not legitimate business expenses.

   v. Pressure to suppress internal audit reports containing adverse findings.

      Refer to the "Knowing Misrepresentations in the Preparation and Presentation of Information" interpretation [2.130.010] for additional guidance.

c. Pressure to act without sufficient competence or due care:

   i. Pressure from superiors to inappropriately reduce the extent of work performed.

   ii. Pressure from superiors to perform a task without sufficient skills or training or within unrealistic deadlines.

      Refer to the "General Standards Rule" [2.300.001] for additional guidance.

d. Pressure related to *financial interests*. For example, pressure to manipulate performance indicators from superiors, colleagues or others, such as those who may benefit from participation in compensation or incentive arrangements.

e. Pressure related to gifts or entertainment:

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i. Pressure from others, either internal or external to the *employing organization*, to offer gifts or entertainment to inappropriately influence the judgment or decision-making process of an individual or organization.

ii. Pressure from colleagues to accept inappropriate gifts or entertainment from potential vendors in a bidding process.

Refer to the "Offering or Accepting Gifts or Entertainment" interpretation [2.120.010] for additional guidance.

.05 In determining whether the pressure could result in a breach of the "Integrity and Objectivity Rule" [2.100.001], the *member* might consider factors including the following:

a. The intent of the individual who is exerting the pressure and the nature and significance of the pressure.

b. The application of relevant laws, regulations, and professional standards to the circumstances.

c. The culture and leadership of the *employing organization* including the extent to which it emphasizes the importance of ethical behavior and the expectation that employees will act in an ethical manner. For example, a corporate culture that tolerates unethical behavior may increase the likelihood that the pressure would result in a breach of the rules.

d. Policies and procedures, if any, that the *employing organization* has established, such as ethics or human resources policies that address pressure.

.06 In considering the factors in paragraph .05 along with other factors, and being alert to the requirements of the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [2.400.070], the *member* may consult with the following:

a. A colleague, superior, human resources personnel, internal compliance personnel, or another professional accountant.

b. Relevant professional or regulatory bodies or industry associations.

c. Legal counsel.

.07 If the *member* determines that the pressure would result in a breach of the “Integrity and Objectivity Rule" [2.100.001], the *member* might consider *safeguards*, including these:

a. Discussing the matter with the individual who is exerting the pressure to seek to resolve it.

b. Discussing the matter with the *member’s* supervisor if the supervisor is not the individual exerting the pressure.

c. Escalating the matter within the *employing organization*, for example, with higher levels of management, internal or external auditors, or *those charged with*

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governance, including independent directors and, when appropriate, explaining any consequential risks to the organization.

d. Requesting restructuring or segregating certain responsibilities and duties so that the *member* is no longer involved with the individual or entity exerting the pressure, when doing so would eliminate the pressure to breach the "Integrity and Objectivity Rule." For example, if a *member* is pressured in relation to a conflict of interest, the pressure to breach the rule may be eliminated if the *member* avoids being associated with the matter creating the conflict.

e. Disclosing the matter in accordance with the *employing organization's* policies, including ethics and whistleblowing policies, using any established mechanism, such as a confidential ethics hotline.

f. Consulting with legal counsel.

.08 In situations in which the *member* determines that the pressure to breach the "Integrity and Objectivity Rule" [2.100.001] has not been eliminated, the *member* should do the following:

a. Decline to undertake or discontinue the professional activity that would result in a breach of the rule.

b. Consider whether to continue a relationship with the *employing organization*.

.09 The *member* is also encouraged to document the facts, the communications, the courses of action considered, the parties with whom these matters were discussed, and how the matter was addressed.

Effective Date

.10 This interpretation is effective August 31, 2017.

For more general guidance on applying professional judgement and maintaining an inquiring mind and awareness of possible biases, a nonauthoritative Conceptual Framework Toolkit for Members in Business is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

2.180 Responding to Noncompliance With Laws and Regulations

2.180.010 Responding to Noncompliance With Laws and Regulations

Introduction

.01 When a *member in business* encounters or is made aware of noncompliance or suspected noncompliance with laws and regulations in the course of carrying out *professional services*,

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threats to compliance with the "Integrity and Objectivity Rule" [2.100.001] may exist. The purpose of this interpretation is to set out the *member's* responsibilities when encountering such noncompliance or suspected noncompliance and guide the *member* in evaluating the implications of the matter and the possible courses of action when responding to it. This interpretation applies regardless of the nature of the *employing organization*.

.02 Noncompliance with laws and regulations (noncompliance) comprises acts of omission or commission, intentional or unintentional, that are contrary to the prevailing laws or regulations and are committed by the *member's employing organization* or by *those charged with governance*, by management, or by other individuals working for or under the direction of the *employing organization.*

.03 When responding to noncompliance or suspected noncompliance in the course of carrying out *professional services*, the *member* should consider the *member's* obligations under the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [2.400.070] of the "Acts Discreditable Rule" [2.400.001]. For example, a *member* should not disclose the noncompliance or suspected noncompliance to a third party without the employer's consent unless expressly permitted under the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation [2.400.070], such as when reporting the noncompliance or suspected noncompliance to a regulatory authority in order to comply with applicable laws and regulations, as discussed in paragraph .04.

.04 Some regulators, for example, the SEC or state boards of accountancy, may have regulatory provisions governing how a *member* should address noncompliance or suspected noncompliance which may differ from or go beyond this interpretation. In some circumstances, state and federal civil and criminal laws may also impose additional requirements. When encountering noncompliance or suspected noncompliance, a *member* has a responsibility to obtain an understanding of those legal or regulatory provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure.

.05 A distinguishing mark of the accounting profession is its acceptance of the responsibility to act in the public interest. When responding to noncompliance or suspected noncompliance, the objectives of a *member* are as follows:

a. To comply with the "Integrity and Objectivity Rule" [2.100.001]

b. To alert management or, when appropriate, *those charged with governance* of the *employing organization*, to enable them to

    i. rectify, remediate, or mitigate the consequences of the identified or suspected noncompliance or

    ii. deter the commission of the noncompliance when it has not yet occurred

c. To take such further action as appropriate in the public interest

d. To comply with applicable laws, regulations, and the "Compliance With Standards Rule" [2.310.001]

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Applicability

.06 This interpretation does not apply to the following:

a. Personal misconduct unrelated to the business activities of the *employing organization*

b. Noncompliance by parties other than
   i. the *employing organization*,
   ii. *those charged with governance*,
   iii. management, or
   iv. other individuals working for or under the direction of the *employing organization*.

c. The provision of *professional services* by a *member in business* involving the following:
   i. A litigation or investigation as defined in AICPA Statement on Standards for Forensic Services No. 1.
   ii. A matter where the purpose is to identify, reach a conclusion regarding, or otherwise respond to a known or potential NOCLAR.
   iii. A matter pursuant to which the protections set forth in IRC Section 7525 or any comparable state or local statutes apply.
   iv. A matter where compliance with this interpretation would cause a violation of law or regulation.

A *member* may nevertheless find the guidance in this interpretation helpful in considering how to respond in these situations.

Scope

.07 This interpretation sets out the approach to be taken by a *member* who encounters or is made aware of noncompliance or suspected noncompliance with the following:

a. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the *employing organization's financial statements*

b. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the *employing organization's financial statements*, but compliance with which may be fundamental to the operating aspects of the *employing organization's* business, to its ability to continue its business, or to avoid material penalties

.08 Examples of laws and regulations which this interpretation addresses may include those that deal with the following:

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a. Fraud, corruption, and bribery
b. Money laundering
c. Securities markets and trading
d. Banking and other financial products and services
e. Data protection
f. Tax and pension liabilities and payments
g. Environmental protection
h. Public health and safety

.09 Noncompliance may result in fines, litigation, or other consequences for the *employing organization* that may have a material effect on its *financial statements*. Importantly, such noncompliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees, or the general public. For the purposes of this interpretation, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or nonfinancial terms.

.10 A *member* who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this interpretation with respect to such matters.

Responsibilities of the Employing Organization's Management and Those Charged With Governance

.11 It is the responsibility of the *employing organization's* management, with the oversight of *those charged with governance*, to ensure that the *employing organization's* business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and *those charged with governance* to identify and address any noncompliance by the *employing organization* or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the *employing organization*.

Responsibilities of Members in Business

.12 Many *employing organizations* have established protocols and procedures (for example, an ethics policy or internal whistleblowing mechanism) regarding how noncompliance or suspected noncompliance by the *employing organization* should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the *member's employing organization*, the *member* should consider them in determining how to respond to such noncompliance.

.13 When a *member* becomes aware of a matter to which this interpretation applies, the *member* should take timely steps to comply with this interpretation, taking into account the *member's* understanding of the nature of the matter and the potential harm to the interests of the *employing organization*, investors, creditors, employees, or the general public.

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Responsibilities of Members Who Are Senior Professional Accountants in Business

.14 *Members* who are senior professional accountants in business are directors, officers, or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment, and control of the *employing organization's* human, financial, technological, physical, and intangible resources. Because of their roles, positions, and spheres of influence within the *employing organization*, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to noncompliance or suspected noncompliance than other professional accountants within the *employing organization*.

.15 *Obtaining an understanding of the matter.* If, in the course of carrying out *professional services*, a *member* who is a senior professional accountant becomes aware of credible information concerning an instance of noncompliance or suspected noncompliance, the *member* should obtain an understanding of the matter, including the following:

a. The nature of the act and the circumstances in which it has occurred or is likely to occur

b. The application of the relevant laws and regulations to the circumstances

c. The potential consequences to the *employing organization*, investors, creditors, employees, or the wider public

.16 A *member* who is a senior professional accountant is expected to apply knowledge, professional judgment, and expertise but is not expected to have a level of understanding of laws and regulations beyond that required for the *member's* role within the *employing organization*. Whether an act constitutes noncompliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

.17 Depending on the nature and significance of the matter, the *member* may cause, or take appropriate steps to cause, the matter to be investigated internally.

.18 *Addressing the matter.* If the *member* who is a senior professional accountant identifies or suspects that noncompliance has occurred or may occur, the *member* should, subject to paragraph .12, discuss the matter with the *member's* immediate superior, if any, to determine how the matter should be addressed. If the *member's* immediate superior appears to be involved in the matter, the *member* should discuss the matter with the next higher level of authority within the *employing organization*.

.19 The *member* who is a senior professional accountant should take the appropriate steps to

a. have the matter communicated to *those charged with governance* to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities.

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b. comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of noncompliance or suspected noncompliance to an appropriate authority.

c. have the consequences of the noncompliance or suspected noncompliance rectified, remediated, or mitigated.

d. reduce the risk of reoccurrence.

e. seek to deter the commission of the noncompliance if it has not yet occurred.

.20 In addition to responding to the matter in accordance with the provisions of this section, the *member* who is a senior professional accountant should disclose the matter to the *employing organization's* external auditor, if any, if the *member* determines such disclosure is necessary pursuant to the *member's* obligation to provide all information necessary to enable the auditor to perform the audit. See the "Obligation of a Member to His or Her Employer's External Accountant" interpretation [2.130.030] of the "Integrity and Objectivity Rule" [2.100.001] for additional guidance.

.21 *Determining whether further action is necessary.* The *member* who is a senior professional accountant should evaluate the appropriateness of the response of the *member's* superiors, if any, and *those charged with governance*.

.22 Relevant factors to consider in evaluating the appropriateness of the response of the *member's* superiors, where applicable, and *those charged with governance* may include whether

a. the response is timely.

b. they have taken or authorized appropriate action to seek to rectify, remediate, or mitigate the consequences of the noncompliance, or to avert the noncompliance if it has not yet occurred.

c. the matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

.23 In light of the response of the *member's* superiors, if applicable, and *those charged with governance*, the *member* should determine if further action is necessary in the public interest. The determination of whether further action is necessary, and the nature and extent of it, may depend on various factors, including these:

a. The legal and regulatory framework

b. The urgency of the matter

c. The pervasiveness of the matter throughout the *employing organization*

d. Whether the *member* who is a senior professional accountant continues to have confidence in the integrity of the *member's* superiors and, if applicable, *those charged with governance*

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e. Whether the noncompliance or suspected noncompliance is likely to reoccur

f. Whether there is credible evidence of actual or potential substantial harm to the interests of the *employing organization*, investors, creditors, employees, or the general public

.24 Examples of circumstances that may cause the *member* who is a senior professional accountant no longer to have confidence in the integrity of the *member's* superiors, if applicable, and *those charged with governance* include situations such as the following:

a. The *member* suspects or has evidence of management's involvement or intended involvement in any noncompliance.

b. Contrary to legal or regulatory requirements, management has not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.

.25 Further action by the *member* who is a senior professional accountant may include the following:

a. Informing the management of the parent entity of the matter if the *employing organization* is a member of a group

b. Resigning from the *employing organization*

c. Reporting the noncompliance or suspected noncompliance to an appropriate authority unless prohibited by laws or regulations

.26 When the *member* who is a senior professional accountant determines that resigning from the *employing organization* would be appropriate, doing so would not be a substitute for taking other actions that may be necessary to achieve the *member's* objectives under this section.

.27 The determination of whether to disclose the matter to an appropriate authority may also depend on external factors such as the following:

a. Whether there is an appropriate authority that is able to receive the information and cause the matter to be investigated and action to be taken. Identifying an appropriate authority will depend upon the nature of the matter. For example, an appropriate authority could be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.

b. Whether there exists robust and credible protection from civil, criminal, or professional liability or retaliation afforded by legislation or regulation, such as under whistleblowing legislation or regulation.

c. Whether there are actual or potential *threats* to the physical safety of the senior professional accountant or other individuals.

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.28 As consideration of the matter may involve complex analysis and judgments, the *member* who is a senior professional accountant may want to consider consulting internally or externally, including obtaining legal or other advice to understand the *member's* options and the implications of taking any particular course of action.

.29 *Documentation.* In relation to an identified or suspected act of noncompliance that falls within the scope of this section, the *member* who is a senior professional accountant is encouraged to have the following matters documented:

a. The matter

b. The results of discussions with the *member's* superiors, where applicable, and *those charged with governance* and other parties

c. How the *member's* superiors, where applicable, and *those charged with governance* have responded to the matter

d. The judgments made and the courses of action the *member* took

e. How the *member* is satisfied that the *member* has fulfilled the responsibility set out in paragraph .23

Responsibilities of Members Other Than Those Who Are Senior Professional Accountants in Business

.30 If, in the course of carrying out *professional services*, a *member* becomes aware of information concerning an instance of noncompliance or suspected noncompliance, the *member* should seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

.31 The *member* is expected to apply knowledge, professional judgment, and expertise but is not expected to have a level of understanding of laws and regulations beyond that required for the *member's* role within the *employing organization*. Whether an act constitutes noncompliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

.32 If the *member* identifies or suspects that noncompliance has occurred or may occur, the *member* should, subject to paragraph .12, inform an immediate superior to enable the superior to take appropriate action. If the *member's* immediate superior appears to be involved in the matter, the *member* should inform the next higher level of authority within the *employing organization*.

.33 In addition to responding to the matter in accordance with the provisions of this section, the *member* should disclose the matter to the *employing organization's* external auditor, if any, if the *member* determines such disclosure is necessary pursuant to the *member's* obligation to provide all information necessary to enable the auditor to perform the audit. See the "Obligation of a Member to His or Her Employer's External Accountant" interpretation [2.130.030] for additional guidance.

.34 Further action by the *member* may include reporting the noncompliance or suspected noncompliance to an appropriate authority unless prohibited by laws or regulations. In

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determining whether to disclose the matter to an appropriate authority, the *member* may consider the factors in paragraph .27.

.35 *Documentation.* In relation to an identified or suspected act of noncompliance that falls within the scope of this section, the *member* is encouraged to have the following matters documented:

a. The matter

b. The results of discussions with the *member's* superior; management and, where applicable, *those charged with governance*; and other parties

c. How the *member's* superior has responded to the matter

d. The judgments made and the courses of action the *member* took

Effective Date

.36 This interpretation is effective June 30, 2023. Early implementation is allowed.

Nonauthoritative questions and answers regarding responding to noncompliance with laws and regulations are available. See Ethics Questions & Answers section 90Ethics Questions & Answers section 90, *Responding to Noncompliance With Laws and Regulations*.

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2.300 General Standards

2.300.001 General Standards Rule

.01 A *member* shall comply with the following standards and with any *interpretations* thereof by bodies designated by *Council*.

a. *Professional Competence*. Undertake only those *professional services* that the *member* or the *member's firm* can reasonably expect to be completed with professional competence.

b. *Due Professional Care*. Exercise due professional care in the performance of *professional services*.

c. *Planning and Supervision*. Adequately plan and supervise the performance of *professional services*.

d. *Sufficient Relevant Data*. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any *professional services* performed.

.02 See appendix A, "*Council* Resolution Designating Bodies to Promulgate Technical Standards." [Prior reference: paragraph .01 of ET section 201]

Interpretations Under the General Standards Rule

2.300.005 Application of the Conceptual Framework for Members in Business and Ethical Conflicts

.01 In the absence of an *interpretation* of the "General Standards Rule" [2.300.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Business" [2.000.010].

.02 A *member* would be considered in violation of the "General Standards Rule" [2.300.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [2.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional and legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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A nonauthoritative Conceptual Framework Toolkit for Members in Business is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

2.300.010 Competence

.01 Competence, in this context, means that the *member* or *member's* staff possesses the appropriate technical qualifications to perform *professional services* and, as required, supervises and evaluates the quality of work performed. Competence encompasses knowledge of the profession's standards, the techniques and technical subject matter involved, and the ability to exercise sound judgment in applying such knowledge in the performance of *professional services*.

.02 A *member's* agreement to perform *professional services* implies that the *member* has the necessary competence to complete those services according to professional standards and to apply the *member's* knowledge and skill with reasonable care and diligence. However, the *member* does not assume a responsibility for infallibility of knowledge or judgment.

.03 The *member* may have the knowledge required to complete the services in accordance with professional standards prior to performance. A normal part of providing *professional services* involves performing additional research or consulting with others to gain sufficient competence.

.04 If a *member* is unable to gain sufficient competence, the *member* should suggest the involvement of a competent person to perform the needed *professional service*, either independently or as an associate. [Prior reference: paragraph .02 of ET section 201]

2.300.030 Submission of Financial Statements

.01 When a *member* is a stockholder, a *partner*, a director, an officer, or an employee of an entity and, in this capacity, prepares or submits the entity's *financial statements* to third parties, the *member* should clearly communicate, preferably in writing, the *member's* relationship to the entity and should not imply that the *member* is independent of the entity. In addition, if the communication states affirmatively that the *financial statements* are presented in conformity with the applicable financial reporting framework, the *member* should comply with the "Accounting Principles Rule" [2.320.001].

.02 Refer to the "Use of CPA Credential" interpretation [2.400.100] of the "Acts Discreditable Rule" [2.400.001] for additional guidance. [Prior reference: paragraphs .019–.020 of ET section 291]

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2.310 Compliance With Standards

2.310.001 Compliance With Standards Rule

.01 A *member* who performs auditing, review, compilation, management consulting, tax, or other *professional services* shall comply with standards promulgated by bodies designated by *Council*.

.02 See appendix A," *Council* Resolution Designating Bodies to Promulgate Technical Standards." [Prior reference: paragraph .01 of ET section 202]

A nonauthoritative question and answer regarding use of standards that have not been established by a body designated by AICPA Council is available. See Ethics Questions & Answers section 450.03Ethics Questions & Answers section 450.03, "Use of Standards That Have Not Been Established By a Body Designated By AICPA Council."

Interpretations Under the Compliance with Standards Rule

2.310.005 Application of the Conceptual Framework for Members in Business and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Compliance With Standards Rule" [2.310.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Business" [2.000.010]

.02 A *member* would be considered in violation of the "Compliance With Standards Rule" [2.310.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [2.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015, and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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2.320 Accounting Principles

2.320.001 Accounting Principles Rule

.01 A *member* shall not (1) express an opinion or state affirmatively that the *financial statements* or other financial data of any entity are presented in conformity with generally accepted accounting principles or (2) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies designated by *Council* to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the *member* can demonstrate that due to unusual circumstances the *financial statements* or data would otherwise have been misleading, the *member* can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

.02 See appendix A, "*Council* Resolution Designating Bodies to Promulgate Technical Standards." [Prior reference: paragraph .01 of ET section 203]

Interpretations Under the Accounting Principles Rule

2.320.005 Application of the Conceptual Framework for Members in Business and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Accounting Principles Rule" [2.320.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Business" [2.000.010].

.02 A *member* would be considered in violation of the "Accounting Principles Rule" [2.320.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [2.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to following an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015 and early implementation is allowed provided the member has implemented the revised code. Paragraph .03 is effective December 15, 2014.

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2.320.010 Responsibility for Affirming That Financial Statements Are in Conformity With the Applicable Financial Reporting Framework

.01 A *member* shall not state affirmatively that an entity's *financial statements* or other financial data are presented in conformity with generally accepted accounting principles (GAAP) if such statements or data contain any departure from an accounting principle promulgated by a body designated by *Council* to establish such principles. *Members* who affirm that *financial statements* or other financial data are presented in conformity with GAAP should comply with the "Accounting Principles Rule" [2.320.001]. A *member's* representation in a letter or other communication that an entity's *financial statements* are in conformity with GAAP may be considered an affirmative statement within the meaning of this rule with respect to the *member* who signed the letter or other communication (for example, the *member* signed a report to a regulatory authority, a creditor, or an auditor). [Prior reference: paragraph .05 ET section 203]

2.320.020 Status of Financial Accounting Standards Board, Governmental Accounting Standards Board, Federal Accounting Standards Advisory Board, and International Accounting Standards Board Interpretations

.01 The "Accounting Principles Rule" [2.320.001] authorizes *Council* to designate bodies to establish accounting principles. *Council* has designated the Financial Accounting Standards Board (FASB) as such a body and has resolved that FASB *Accounting Standards Codification*® (ASC) constitutes accounting principles as contemplated in the rule. *Council* designated the Governmental Accounting Standards Board (GASB), with respect to Statements of Governmental Accounting Standards issued in July 1984 and thereafter, as the body to establish financial accounting principles for state and local governmental entities, pursuant to the "Accounting Principles Rule." *Council* designated the Federal Accounting Standards Advisory Board (FASAB), with respect to Statements of Federal Accounting Standards adopted and issued in March 1993 and subsequently, as the body to establish accounting principles for federal government entities, pursuant to the "Accounting Principles Rule." *Council* designated the International Accounting Standards Board (IASB) as an accounting body for purposes of establishing international financial accounting and reporting principles.

.02 Reference to GAAP in the "Accounting Principles Rule" [2.320.001] means those accounting principles promulgated by bodies designated by *Council*, which are listed in paragraph .01 and in appendix A, "Council Resolution Designating Bodies to Promulgate Technical Standards."

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.03 The Professional Ethics Division will look to the codification or statements and any interpretations thereof issued by FASB, GASB, FASAB, or IASB in determining whether a *member* has departed from an accounting principle established by a designated accounting standard-setter in FASB ASC, a Statement of Governmental Accounting Standards, a Statement of Federal Accounting Standards, or International Financial Reporting Standards (IFRS). [Prior reference: paragraph .03 of ET section 203]

2.320.030 Departures From Generally Accepted Accounting Principles

.01 It is difficult to anticipate all the circumstances in which accounting principles may be applied. However, there is a strong presumption that adherence to GAAP would, in nearly all instances, result in *financial statements* that are not misleading. The "Accounting Principles Rule" [2.320.001] recognizes that, upon occasion, there may be unusual circumstances when the literal application of GAAP would have the effect of rendering *financial statements* misleading. In such cases, the proper accounting treatment to apply is that which will not render the *financial statements* misleading.

.02 The question of what constitutes unusual circumstances, as referred to in the "Accounting Principles Rule" [2.320.001], is a matter of professional judgment involving the ability to support the position that adherence to a promulgated principle within GAAP would be regarded generally by reasonable persons as producing misleading *financial statements*.

.03 Examples of circumstances that may justify a departure from GAAP include new legislation or evolution of a new form of business transaction. Examples of circumstances that would not justify departures from GAAP include an unusual degree of materiality or conflicting industry practices. [Prior reference: paragraph .02 of ET section 203]

.04 If the statements or data contain such departures, see the "Accounting Principles Rule" [2.320.001] for further guidance.

2.320.040 Financial Statements Prepared Pursuant to Financial Reporting Frameworks Other Than GAAP

.01 Reference to GAAP in the "Accounting Principles Rule" [2.320.001] means those accounting principles promulgated by bodies designated by *Council*, which are listed in appendix A. The bodies designed by *Council* to promulgate accounting principles are

a. FASAB,

b. FASB,

c. GASB, and

d. IASB.

.02 *Financial statements* prepared pursuant to other accounting principles would be considered financial reporting frameworks other than GAAP within the context of the "Accounting Principles Rule" [2.320.001].

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.03 However, the "Accounting Principles Rule" [2.320.001] does not preclude a *member* from preparing or reporting on *financial statements* that have been prepared pursuant to financial reporting frameworks other than GAAP, such as

a. financial reporting frameworks generally accepted in another country, including jurisdictional variations of IFRS such that the entity's *financial statements* do not meet the requirements for full compliance with IFRS, as promulgated by the IASB;

b. financial reporting frameworks prescribed by an agreement or a contract; or

c. other special purpose frameworks, including statutory financial reporting provisions required by law or a U.S. or foreign governmental regulatory body to whose jurisdiction the entity is subject.

.04 In such circumstances, however, the *financial statements* or *member's* reports thereon should not purport that the *financial statements* are in accordance with GAAP and the *financial statements* or reports on those *financial statements*, or both, should clarify the financial reporting framework(s) used. [Prior reference: paragraph .06 of ET section 203]

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2.400 Acts Discreditable

2.400.001 Acts Discreditable Rule

.01 A *member* shall not commit an act discreditable to the profession. [Prior reference: paragraph .01 of ET section 501]

Interpretations Under the Acts Discreditable Rule

2.400.005 Application of the Conceptual Framework for Members in Business and Ethical Conflicts

.01 In the absence of an *interpretation* of the "Acts Discreditable Rule" [2.400.001] that addresses a particular relationship or circumstance, a *member* should apply the "Conceptual Framework for Members in Business" [2.000.010].

.02 A *member* would be considered in violation of the "Acts Discreditable Rule" [2.400.001] if the *member* cannot demonstrate that *safeguards* were applied that eliminated or reduced significant *threats* to an *acceptable level*.

.03 A *member* should consider the guidance in "Ethical Conflicts" [2.000.020] when addressing ethical conflicts that may arise when the *member* encounters obstacles to follow an appropriate course of action. Such obstacles may be due to internal or external pressures or to conflicts in applying relevant professional standards or legal standards, or both. [No prior reference: new content]

Effective Date

.04 Paragraphs .01 and .02 are effective December 15, 2015 and early implementation is allowed. Paragraph .03 is effective December 15, 2014.

A nonauthoritative Conceptual Framework Toolkit for Members in Business is available at www.aicpa-cima.com/resources/article/aicpa-conceptual-framework-approach.

2.400.010 Discrimination and Harassment in Employment Practices

.01 A *member* would be presumed to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [2.400.001] if a final determination, no longer subject to appeal, is made by a court or an administrative agency of competent jurisdiction that a *member* has violated any antidiscrimination laws of the United States, state, or

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municipality, including those related to sexual and other forms of harassment. [Prior reference: paragraph .03 of ET section 501]

2.400.020 Professional Qualifications or Competencies

.01 A *member* who solicits or knowingly discloses Uniform CPA Examination questions or answers without the AICPA's written authorization shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [2.400.001]. [Prior reference: paragraph .07 of ET section 501]

.02 A *member* shall be considered in violation of the "Acts Discreditable Rule" [2.400.001] if a *member* engages in false, misleading, or deceptive acts related to professional qualifications or competencies. Examples of such false, misleading, or deceptive acts include

a. soliciting or knowingly disclosing questions or answers of any professional education course examination unless collaboration is expressly permitted.

b. falsifying or misrepresenting attendance at a professional education course.

c. tampering with the administration of or examination grading for any professional education course or credential.

[See Revision History Table.]

2.400.030 Failure to File a Tax Return or Pay a Tax Liability

.01 A *member* who fails to comply with applicable federal, state, or local laws or regulations regarding (*a*) the timely filing of the *member's* personal tax returns or tax returns for the *member's* employer that the *member* has the authority to timely file or (*b*) the timely remittance of all payroll and other taxes collected on behalf of others may be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [2.400.001]. [Prior reference: paragraph .08 of ET section 501]

2.400.040 Negligence in the Preparation of Financial Statements or Records

.01 A *member* shall be considered in violation of the "Acts Discreditable Rule" [2.400.001] if the *member*, by virtue of his or her negligence, does any of the following:

a. Makes, or permits or directs another to make, materially false and misleading entries in the *financial statements* or records of an entity.

b. Fails to correct an entity's *financial statements* that are materially false and misleading when the *member* has the authority to record an entry.

c. Signs, or permits or directs another to sign, a document containing materially false and misleading information. [Prior reference: paragraph .05 of ET section 501]

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2.400.050 Governmental Bodies, Commissions, or Other Regulatory Agencies

.01 Many governmental bodies, commissions, or other regulatory agencies have established requirements, such as standards, guides, rules, and regulations, that *members* are required to follow in the preparation of *financial statements* or related information. For example, the SEC, the Federal Communications Commission, state insurance commissions, and other regulatory agencies have established such requirements.

.02 If a *member* prepares *financial statements* or related information (for example, management's discussion and analysis) for purposes of reporting to such bodies, commissions, or regulatory agencies, the *member* should follow the requirements of such organizations in addition to the applicable financial reporting framework.

.03 A *member's* material departure from such requirements would be considered a violation of the "Acts Discreditable Rule" [2.400.001] unless the *member* discloses in the *financial statements* or related information that such requirements were not followed and the applicable reasons. [Prior reference: paragraph .06 of ET section 501]

2.400.060 Indemnification and Limitation of Liability Provisions

.01 Certain governmental bodies, commissions, or other regulatory agencies (collectively, regulators) have established requirements through laws, regulations, or published interpretations that

a. prohibit entities subject to their regulation (regulated entity) from including certain types of indemnification and limitation of liability provisions in agreements for the performance of audit or other attest services that are required by such regulators; or

b. provide that the existence of such provisions disqualifies a *member* from rendering such services to these entities.

For example, federal banking regulators, state insurance commissions, and the SEC have established such requirements.

.02 If a *member* enters into, or directs or knowingly permits another individual to enter into, a contract for the performance of audit or other attest services that are subject to the requirements of these regulators, the *member* should not include, or knowingly permit or direct another individual to include, an indemnification or limitation of liability provision that would cause the regulated entity or a *member* to be in violation of such requirements or disqualify a *member* from providing such services to the regulated entity. A *member* who enters into, or directs or knowingly permits another individual to enter into, such an agreement for the performance of audit or other attest services would be considered in violation of the "Acts Discreditable Rule" [2.400.001]. [Prior reference: paragraph .09 of ET section 501]

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2.400.070 Confidential Information Obtained From Employment or Volunteer Activities

.01 A *member* should maintain the confidentiality of his or her employer's confidential information and should not use or disclose any confidential employer information obtained as a result of an employment relationship, such as discussions with the employer's vendors, customers, or lenders (for example, any confidential information pertaining to a current or previous employer, subsidiary, affiliate, or parent thereof, as well as any entities for which the *member* is working in a volunteer capacity).

.02 For purposes of this interpretation, confidential employer information is any proprietary information pertaining to the employer or any organization for whom the *member* may work in a volunteer capacity that is not known to be available to the public and is obtained as a result of such relationships.

.03 A *member* should be alert to the possibility of inadvertent disclosure, particularly to a close business associate or *close relative* or *immediate family* member. The *member* should also take reasonable steps to ensure that staff under his or her control or others within the *employing organization* and persons from whom advice and assistance are obtained are aware of the confidential nature of the information.

.04 When a *member* changes employment, a *member* should not use confidential employer information acquired as a result of a prior employment relationship to his or her personal advantage or the advantage of a third party, such as a current or prospective employer. The requirement to maintain the confidentiality of an employer's confidential information continues even after the end of the relationship between a *member* and the employer. However, the *member* is entitled to use experience and expertise gained through prior employment relationships.

.05 A *member* would be considered in violation of the "Acts Discreditable Rule" [2.400.001] if the *member* discloses or uses any confidential employer information acquired as a result of employment or volunteer relationships without the proper authority or specific consent of the employer or organization for whom the *member* may work in a volunteer capacity, unless there is a legal or professional responsibility to use or disclose such information.

.06 The following are examples of situations in which *members* are permitted or may be required to disclose confidential employer information or when such disclosure may be appropriate:

a. Disclosure is permitted by law and authorized by the employer.

b. Disclosure is required by law, for example, to

   i. comply with a validly issued and enforceable subpoena or summons or

   ii. inform the appropriate public authorities of violations of law that have been discovered.

c. There is a professional responsibility or right to disclose information, when not prohibited by law, to

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i. initiate a complaint with, or respond to any inquiry made by, the Professional Ethics Division or trial board of the AICPA or a duly constituted investigative or disciplinary body of a state CPA society, board of accountancy, or other regulatory body;

ii. protect the *member's* professional interests in legal proceedings;

iii. comply with professional standards and other ethics requirements; or

iv. report potential concerns regarding questionable accounting, auditing, or other matters to the employer's confidential complaint hotline or *those charged with governance*.

d. Disclosure is permitted on behalf of the employer to

i. obtain financing with lenders;

ii. communicate with vendors, *clients*, and customers; or

iii. communicate with the employer's external accountant, attorneys, regulators, and other business professionals.

.07 In deciding whether to disclose confidential employer information, relevant factors to consider include the following:

a. Whether all the relevant information is known and substantiated to the extent that it is practicable. When the situation involves unsubstantiated facts, incomplete information, or unsubstantiated conclusions, the *member* should use professional judgment in determining the type of disclosure to be made, if any.

b. Whether the parties to whom the communication may be addressed are appropriate recipients.

.08 A *member* may wish to consult with his or her legal counsel prior to disclosing, or determining whether to disclose, confidential employer information.

.09 Refer to the "Subordination of Judgment" interpretation [2.130.020] of the "Integrity and Objectivity Rule" [2.100.001] for additional guidance. [Prior reference: paragraph .10 of ET section 501]

2.400.090 False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services

.01 A *member* would be in violation of the "Acts Discreditable Rule" [2.400.001] if the *member* promotes or markets the *member's* abilities to provide *professional services* or makes claims about the *member's* experience or qualifications in a manner that is false, misleading, or deceptive.

.02 Promotional efforts would be false, misleading, or deceptive if they contain any claim or representation that would likely cause a reasonable person to be misled or deceived.

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This includes any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body. [Prior reference: paragraph .11 of ET section 501]

2.400.100 Use of the CPA Credential

.01 A *member* should refer to applicable state accountancy laws and board of accountancy rules and regulations for guidance regarding the use of the CPA credential. A *member* who fails to follow the accountancy laws, rules, and regulations on use of the CPA credential in any of the jurisdictions in which the CPA practices would be considered to have used the CPA credential in a manner that is false, misleading, or deceptive and in violation of the "Acts Discreditable Rule" [2.400.001]. [Prior reference: paragraph .12 of ET section 501].

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Part 3

Other Members

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3.000 Introduction

.01 Part 3 of the Code of Professional Conduct (the code) applies to *members* who are not in *public practice* and are not *members in business*. Accordingly, when the term *member* is used in part 3 of the code, the requirements apply only to such *members*. [No prior reference: new content]

Effective Date

.02 Effective December 15, 2014.

3.000.030 Applicability

.01 Part 3 of the code applies to *members* who are neither *members* in *public practice* nor *members in business*, for example *members* who are retired or not currently employed. These *members* are subject to the "Acts Discreditable Rule" [3.400.001]. [No prior reference: new content]

Effective Date

.02 Effective December 15, 2014.

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3.400 Acts Discreditable

3.400.001 Acts Discreditable Rule

.01 A *member* shall not commit an act discreditable to the profession. [Prior reference: paragraph .01 of ET section 501]

Interpretations Under the Acts Discreditable Rule

3.400.010 Discrimination and Harassment in Employment Practices

.01 A *member* would be presumed to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [3.400.001] if a final determination, no longer subject to appeal, is made by a court or an administrative agency of competent jurisdiction that a *member* has violated any antidiscrimination laws of the United States, state, or municipality, including those related to sexual and other forms of harassment. [Prior reference: paragraph .03 of ET section 501]

3.400.020 Professional Qualifications or Competencies

.01 A *member* who solicits or knowingly discloses Uniform CPA Examination questions or answers without the AICPA's written authorization shall be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [3.400.001]. [Prior reference: paragraph .07 of ET section 501]

.02 A *member* shall be considered in violation of the "Acts Discreditable Rule" [3.400.001] if a *member* engages in false, misleading, or deceptive acts related to professional qualifications or competencies. Examples of such false, misleading, or deceptive acts include

a. soliciting or knowingly disclosing questions or answers of any professional education course examination unless collaboration is expressly permitted.

b. falsifying or misrepresenting attendance at a professional education course.

c. tampering with the administration of or examination grading for any professional education course or credential.

[See Revision History Table.]

3.400.030 Failure to File a Tax Return or Pay a Tax Liability

.01 A *member* who fails to comply with applicable federal, state, or local laws or regulations regarding (*a*) the timely filing of the *member's* personal tax returns or (*b*) the timely remittance of all payroll and other taxes collected on behalf of others may be considered to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [3.400.001]. [Prior reference: paragraph .08 of ET section 501]

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3.400.070 Confidential Information Obtained From Former Employment or Previous Volunteer Activities

.01 A *member* should maintain the confidentiality of his or her former employer's confidential information and should not use or disclose any confidential employer information obtained as a result of an employment relationship, such as discussions with the employer's vendors, customers, or lenders (for example, any confidential information pertaining to a previous employer, subsidiary, affiliate, or parent thereof, as well as any entities for which the *member* worked in a volunteer capacity).

.02 For purposes of this interpretation, confidential employer information is any proprietary information pertaining to the former employer or any organization for whom the *member* may have worked in a volunteer capacity that is not known to be available to the public and is obtained as a result of such relationships.

.03 A *member* should be alert to the possibility of inadvertent disclosure, particularly to a close business associate or *close relative* or *immediate family* member.

.04 A *member* should not use confidential employer information acquired as a result of a prior employment relationship to his or her personal advantage or the advantage of a third party, such as a current or prospective employer. The requirement to maintain the confidentiality of an employer's confidential information continues even after the end of the relationship between a *member* and the employer. However, the *member* is entitled to use experience and expertise gained through prior employment relationships.

.05 A *member* would be considered in violation of the "Acts Discreditable Rule" [3.400.001] if the *member* discloses or uses any confidential employer information acquired as a result of former employment or volunteer relationships without the proper authority or specific consent of the former employer or organization for whom the *member* may work in a volunteer capacity, unless there is a legal or professional responsibility to use or disclose such information.

.06 The following are examples of situations in which *members* are permitted or may be required to disclose confidential employer information or when such disclosure may be appropriate:

a. Disclosure is permitted by law and authorized by the former employer.

b. Disclosure is required by law, for example, to

   i. comply with a validly issued and enforceable subpoena or summons or

   ii. inform the appropriate public authorities of violations of law that have been discovered.

c. There is a professional responsibility or right to disclose information, when not prohibited by law, to

   i. initiate a complaint with, or respond to any inquiry made by, the Professional Ethics Division or trial board of the AICPA or a duly constituted investigative

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or disciplinary body of a state CPA society, board of accountancy, or other regulatory body;

ii. protect the *member's* professional interests in legal proceedings;

iii. comply with professional standards and other ethics requirements; or

iv. report potential concerns regarding questionable accounting, auditing, or other matters to the former employer's confidential complaint hotline or *those charged with governance*.

d. Disclosure is permitted on behalf of the former employer to

i. obtain financing with lenders;

ii. communicate with vendors, *clients*, and customers; or

iii. communicate with the former employer's external accountant, attorneys, regulators, and other business professionals.

.07 In deciding whether to disclose confidential employer information, relevant factors to consider include the following:

a. Whether all the relevant information is known and substantiated to the extent that it is practicable. When the situation involves unsubstantiated facts, incomplete information, or unsubstantiated conclusions, the member should use professional judgment in determining the type of disclosure to be made, if any.

b. Whether the parties to whom the communication may be addressed are appropriate recipients.

.08 A *member* may wish to consult with his or her legal counsel prior to disclosing, or determining whether to disclose, confidential employer information. [Prior reference: paragraph .10 of ET section 501]

3.400.090 False, Misleading, or Deceptive Acts in Promoting or Marketing Services

.01 A *member* would be in violation of the "Acts Discreditable Rule" [3.400.001] if the *member* promotes or markets the *member's* abilities to provide services or makes claims about the *member's* experience or qualifications in a manner that is false, misleading, or deceptive.

.02 Promotional efforts would be false, misleading, or deceptive if they contain any claim or representation that would likely cause a reasonable person to be misled or deceived. This includes any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body. [No prior reference: new content]

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Effective Date

.03 Effective December 15, 2014.

3.400.100 Use of the CPA Credential

.01 A *member* should refer to applicable state accountancy laws and board of accountancy rules and regulations for guidance regarding the use of the CPA credential. A *member* who fails to follow the accountancy laws, rules, and regulations on use of the CPA credential in any of the jurisdictions in which the CPA practices would be considered to have used the CPA credential in a manner that is false, misleading, or deceptive and in violation of the "Acts Discreditable Rule" [3.400.001]. [Prior reference: paragraph .12 of ET section 501]

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Appendix A

Council Resolution Designating Bodies to Promulgate Technical Standards

[As amended January 12, 1988; Revised April 1992, October 1999, May 2004, October 2007, May 2008, October 2012, May 2013, and May 20, 2018.]

Federal Accounting Standards Advisory Board

RESOLVED: That the Federal Accounting Standards Advisory Board, with respect to its statements of federal accounting standards and concepts adopted and issued in March of 1993 and subsequently, in accordance with its rules of procedure, the memorandum of understanding, and public notice designating FASAB's standards and concepts as having substantial authoritative support, be, and hereby is, designated by the Council of the American Institute of Certified Public Accountants as the body to establish financial accounting principles for federal governmental entities pursuant to the "Accounting Principles Rule" (AICPA, *Professional Standards*, ET sec. 1.320.001 and 2.320.001) of the Code.[1]

[Added by *Council* October 1999.]

Financial Accounting Standards Board

WHEREAS: In 1959 the *Council* designated the Accounting Principles Board to establish accounting principles, and

WHEREAS: The *Council* is advised that the Financial Accounting Standards Board (FASB) has become operational, it is

RESOLVED: That as of the date hereof the FASB, in respect of statements of financial accounting standards finally adopted by such board in accordance with its rules of procedure and the bylaws of the Financial Accounting Foundation, be, and hereby is, designated by this *Council* as the body to establish accounting principles pursuant to the "Accounting Principles Rule," (AICPA, *Professional Standards*, ET sec. 1.320.001 and 2.320.001) and standards on disclosure of financial information for such entities outside *financial statements* in published financial reports containing *financial statements* under the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct of the American Institute of Certified

[1]The changes to this appendix as of December 15, 2014, are administrative changes that were made to conform to the reformatted Code of Professional Conduct.

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Public Accountants provided, however, any accounting research bulletins, or opinions of the accounting principles board issued or approved for exposure by the accounting principles board prior to April 1, 1973, and finally adopted by such board on or before June 30, 1973, shall constitute statements of accounting principles promulgated by a body designated by *Council* as contemplated in the "Accounting Principles Rule" (AICPA, *Professional Standards*, ET sec. 1.320.001 and 2.320.001) of the Code unless and until such time as they are expressly superseded by action of the FASB.[1]

Governmental Accounting Standards Board

WHEREAS: The Governmental Accounting Standards Board (GASB) has been established by the board of trustees of the Financial Accounting Foundation (FAF) to issue standards of financial accounting and reporting with respect to activities and transactions of state and local governmental entities, and

WHEREAS: The American Institute of Certified Public Accountants is a signatory to the agreement creating the GASB as an arm of the FAF and has supported the GASB professionally and financially, it is

RESOLVED: That as of the date hereof, the GASB, with respect to statements of governmental accounting standards adopted and issued in July 1984 and subsequently, in accordance with its rules of procedure and the bylaws of the FAF, be, and hereby is, designated by the Council of the American Institute of Certified Public Accountants as the body to establish financial accounting principles for state and local governmental entities, pursuant to the "Accounting Principles Rule" (AICPA, *Professional Standards*, ET sec. 1.320.001 and 2.320.001) of the Code of Professional Conduct, and standards on disclosure of financial information for such entities outside *financial statements* in published financial reports containing *financial statements* under the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct.[1]

Public Company Accounting Oversight Board

WHEREAS: The Public Company Accounting Oversight Board (PCAOB) has been established pursuant to the Sarbanes-Oxley Act of 2002 (the Act), and

WHEREAS: The PCAOB has authority under the Act to establish or adopt, or both, by PCAOB rule, auditing and related attestation standards, quality control, ethics, *independence* and other standards relating to the preparation and issuance of audit reports for issuers as defined in the Act.

RESOLVED: That the PCAOB be, and hereby is, designated by the Council of the American Institute of Certified Public Accountants as the body to establish standards relating to the preparation and issuance of audit reports for entities within its jurisdiction as defined by the Act pursuant to the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001) of the Code of Professional Conduct.[1]

[Added by *Council* May 2004.]

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International Accounting Standards Board

WHEREAS, At its Spring, 2008 meeting, the *Council* resolved that the International Accounting Standards Board (IASB) be designated as the body which is authorized to establish professional standards with regard to international accounting and reporting principles under the "Compliance With Standards Rule" (ET sec. 1.310.001 and 2.310.001) and the "Accounting Principles Rule" (ET sec. 1.320.001 and 2.320.001) of the AICPA Code of Professional Conduct, with the proviso that *Council* would, three to five years after such designation, reassess whether continued recognition of the IASB for such purposes is appropriate, and readopted that resolution in May 2013, and

[Added by *Council* May 19, 2013, amended May 20, 2018.]

WHEREAS, The *Council* supports the IASB and believes recognition of the IASB as the body authorized to establish professional standards with regard to international accounting and reporting principles under the "Compliance With Standards Rule" (ET sec. 1.310.001 and 2.310.001) and the "Accounting Principles Rule" (ET sec. 1.320.001 and 2.320.001) of the AICPA Code of Professional Conduct should continue; and

[Added by *Council* May 19, 2013; readopted by *Council*, May 20, 2018.]

WHEREAS, The *Council* also believes it should again reassess such recognition three to five years after the effective date of this resolution; now

[Added by *Council* May 19, 2013; readopted by *Council*, May 20, 2018.]

BE IT RESOLVED, That the *Council* hereby readopts the resolutions related to the IASB set out in Appendix A to the Code of Professional Conduct as set out below.

[Added by *Council* May 19 2013; readopted by *Council*, May 20, 2018.]

RESOLVED: That the International Accounting Standards Board (IASB) is hereby designated as the body to establish professional standards with respect to international financial accounting and reporting principles pursuant to the "Compliance With Standards Rule" (ET sec. 1.310.001 and 2.310.001) and the "Accounting Principles Rule" (ET sec. 1.320.001 and 2.320.001) of the Code of Professional Conduct; and

BE IT FURTHER RESOLVED: That the *Council* shall reassess, no sooner than three years but no later than five years after the effective date of this resolution, whether continued recognition of the IASB as the body designated to establish professional standards with respect to international financial accounting and reporting principles under the "Compliance With Standards Rule" (ET sec. 1.310.001 and 2.310.001) and the "Accounting Principles Rule" (ET sec. 1.320.001 and 2.320.001) of the Code of Professional Conduct is appropriate.[1]

[Added by *Council* May 18, 2008; readopted by *Council*, May 19, 2013 and May 20, 2018.]

AICPA COMMITTEES AND BOARDS

WHEREAS: The membership of the *Institute* has adopted the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001 and 2.300.001) of the Code of

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Professional Conduct, which authorizes the *Council* to designate bodies to promulgate technical standards with which *members* must comply, and therefore it is[1]

Accounting and Review Services Committee

RESOLVED: That the AICPA accounting and review services committee is hereby designated to promulgate standards under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001) of the Code of Professional Conduct with respect to unaudited *financial statements* or other unaudited financial information of an entity that is not required to file *financial statements* with a regulatory agency in connection with the sale or trading of its securities in a public market.[1]

Auditing Standards Board

RESOLVED: That, with respect to standards relating to the preparation and issuance of audit reports not included within the resolution on the Public Company Accounting Oversight Board, the AICPA auditing standards board is hereby designated as the body authorized under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001) of the Code of Professional Conduct to promulgate auditing, attestation, and quality control standards and procedures.

RESOLVED: That the auditing standards board shall establish under statements on auditing standards, the responsibilities of *members* with respect to standards for disclosure of financial information outside of the *financial statements* in published financial reports containing *financial statements*.[1]

[Revised May 2004.]

Management Consulting Services Executive Committee

RESOLVED: That the AICPA management consulting services executive committee is hereby designated to promulgate standards under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001 and 2.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct with respect to the offering of management consulting services, provided, however, that such standards do not deal with the broad question of what, if any, services should be proscribed.

AND FURTHER RESOLVED: That any *Institute* committee or board now or in the future authorized by the *Council* to issue enforceable standards under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001 and 2.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct must observe an exposure process seeking comment from other affected committees and boards, as well as the general membership.[1]

[Revised April 1992.]

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Attestation Standards

RESOLVED: That the AICPA accounting and review services committee, auditing standards board, and management consulting services executive committee are hereby designated as bodies authorized under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001) of the Code of Professional Conduct to promulgate attestation standards in their respective areas of responsibility.[1]

[Added by *Council*, May 1988; revised April 1992.]

Tax Executive Committee

RESOLVED: That the Tax Executive Committee is hereby designated as the body authorized under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001 and 2.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct to promulgate professional practice standards with respect to tax services.[1]

[Added by *Council*, October 1999.]

Forensic and Valuation Services Executive Committee

RESOLVED: That the Forensic and Valuation Services Executive Committee is hereby designated as the body to promulgate professional standards with respect to forensic and valuation services under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001 and 2.300.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct.[1]

[Added by *Council*, October 2007.]

Personal Financial Planning Executive Committee

RESOLVED: That the Personal Financial Planning Executive Committee is hereby designated as the body to promulgate professional standards with respect to personal financial planning services under the "General Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.300.001 and 2.310.001) and the "Compliance With Standards Rule" (AICPA, *Professional Standards*, ET sec. 1.310.001 and 2.310.001) of the Code of Professional Conduct.[1]

[Added by *Council*, October 2012.]

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Appendix B

Council Resolution Concerning the Form of Organization and Name Rule

[As adopted May 23, 1994; revised May 7, 1997, May 15, 2000, May 22, 2006 August 2011, and October 19, 2014.]

A. RESOLVED: That with respect to a *member* engaged in *public practice* in a *firm* or organization which performs (1) any audit or other engagement performed in accordance with the Statements on Auditing Standards, (2) any review of a *financial statement* performed in accordance with the Statements on Standards for Accounting and Review Services, (3) any examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements, (4) any engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board (PCAOB), or (5) any examination, review, or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in subsection (A) (3), or which holds itself out as a *firm* of certified public accountants or uses the term "certified public accountant(s)" or the designation "CPA" in connection with its name, the characteristics of such a *firm* or organization under the "Form of Organization and Name Rule" (AICPA, *Professional Standards*, ET sec. 1.800.001) of the Code of Professional Conduct are as set forth below:

1. A majority of the ownership of the *member'sfirm* in terms of financial interests and voting rights must belong to CPAs. Any non-CPA owner would have to be actively engaged as a member of the *firm* or its affiliates. Ownership by investors or commercial enterprises not actively engaged as members of the *firm* or its affiliates is against the public interest and continues to be prohibited.

2. There must be a CPA who has ultimate responsibility for all the services described in A above, compilation services and other engagements governed by Statements on Auditing Standards or Statements on Standards for Accounting and Review Services, and non-CPA owners could not assume ultimate responsibility for any such services or engagements.

3. Non-CPA owners would be permitted to use the title "principal," "owner," "officer," "member" or "shareholder" or any other title permitted by state law, but not hold themselves out to be CPAs.

4. A *member* shall not knowingly permit a person, whom the *member* has the authority or capacity to control, to carry out on his or her behalf, either with

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or without compensation, acts which, if carried out by the *member*, would place the *member* in violation of the rules. Further, a *member* may be held responsible for the acts of all persons associated with him or her in the *public practice* whom the *member* has the authority or capacity to control.

5. Owners shall at all times own their equity in their own right and shall be the beneficial owners of the equity capital ascribed to them. Provision would have to be made for the ownership to be transferred, within a reasonable period of time, to the *firm* or to other qualified owners if the owner ceases to be actively engaged in the *firm* or its affiliates.

6. Non-CPA owners would not be eligible for regular membership in the AICPA, unless they meet the requirements in BL section 2.2.1.

B. RESOLVED: The characteristics of all other *firms* or organizations are deemed to be whatever is legally permissible under applicable law or regulation, except as otherwise provided in paragraph C below.

C. RESOLVED: That with respect to a *member* engaged in *public practice* in a *firm* or organization which is not within the description of a *firm* or organization set forth in paragraph A above, but who performs compilations of *financial statements* performed in accordance with the Statements on Standards for Accounting and Review Services, the characteristics of such a *firm* or organization under the "Form of Organization and Name Rule" of the Code are as set forth below.

1. There must be a CPA who has ultimate responsibility for any *financial statement* compilation services provided by the *firm* and by each business unit performing such compilation services and non-CPA owners could not assume ultimate responsibility for any such services.

2. Any compilation report must be signed individually by a CPA, and may not be signed in the name of the *firm* or organization.

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Appendix C

Revision History Table

Revisions made to the Code of Professional Conduct subsequent to June 1, 2014, appear below in the Revision History Table. In addition to identifying the numeric citation for the change, the effective date is identified and a link to the marked version of the content is provided when available. If the revision changes guidance that is already authoritative, the action taken (see "Action" column) will be identified as "revised." If the revision is new guidance, the action taken will be identified as "added."

The "New and Revised Interpretations and Other Guidance" [0.600.010] section and the "Pending Interpretations and Other Guidance" [0.600.020] section provide a listing of current activity.

If you need an official release that is not linked in this table, please send an email to PEECCoordinator@aicpa.org with the citation and the effective date.

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Appendix C — Revision History			
Citation	**Action**	**Effective Date**	**Official Release**
0.400.49	Added September 2025	Effective September 15, 2026	www.aicpa-cima.com/resources/download/simultaneous-employment
1.275.005	Added September 2025	Effective September 15, 2026	www.aicpa-cima.com/resources/download/simultaneous-employment
1.210.010	Revised September 2025	Effective September 15, 2026	www.aicpa-cima.com/resources/download/simultaneous-employment
1.224.010	Revised September 2025	Effective September 15, 2026	www.aicpa-cima.com/resources/download/simultaneous-employment
1.279.010	Revised September 2025	Effective September 15, 2026	www.aicpa-cima.com/resources/download/simultaneous-employment
1.280.010	Revised September 2025	Effective September 15, 2026	www.aicpa-cima.com/resources/download/simultaneous-employment
1.240.070	Revised February 2025	Effective May 31, 2025	www.aicpa-cima.com/resources/download/sec-529-plans
1.295.135	Revised December 2024	Effective January 2026	www.aicpa-cima.com/resources/download/employee-or-executive-recruiting
0.400.45	Added December 2023	Effective December 15, 2023	www.aicpa-cima.com/news/download/new-and-revised-definitions-related-to-public-interest-entities
0.400.43	Revised December 2023	Effective December 15, 2024	www.aicpa-cima.com/news/download/new-and-revised-definitions-related-to-public-interest-entities
1.230.030	Added September 2023	Effective January 1, 2025	www.aicpa-cima.com/resources/download/new-and-revised-interpretations-related-to-fees
1.230.040	Added September 2023	Effective January 1, 2025	www.aicpa-cima.com/resources/download/new-and-revised-interpretations-related-to-fees
1.210.010	Added September 2023	Effective January 1, 2025	www.aicpa-cima.com/resources/download/new-and-revised-interpretations-related-to-fees
1.224.010	Added September 2023	Effective January 1, 2025	www.aicpa-cima.com/resources/download/new-and-revised-interpretations-related-to-fees
1.400.020	Revised, September 2023	Effective September 15, 2023	www.aicpa-cima.com/resources/download/revised-interpretation-professional-qualifications-or-competencies-formerly-uniform-cpa-examination-and-continuing-professional-education
2.400.020	Revised, September 2023	Effective September 15, 2023	www.aicpa-cima.com/resources/download/

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Appendix C — Revision History			
Citation	**Action**	**Effective Date**	**Official Release**
			revised-interpretation-professional-qualifications-or-competencies-formerly-uniform-cpa-examination-and-continuing-professional-education
3.400.020	Revised, September 2023	Effective September 15, 2023	www.aicpa-cima.com/resources/download/revised-interpretation-professional-qualifications-or-competencies-formerly-uniform-cpa-examination-and-continuing-professional-education
0.400.09	Added January 2023	Effective for compliance audits commencing after June 15, 2023	www.aicpa-cima.com/resources/download/compliance-audits-definitions
0.400.10	Added January 2023	Effective for compliance audits commencing after June 15, 2023	www.aicpa-cima.com/resources/download/compliance-audits-definitions
0.400.18	Revised January 2023	Effective for compliance audits commencing after June 15, 2023	www.aicpa-cima.com/resources/download/compliance-audits-definitions
1.240.070	Revised September 2022	December 15, 2014	www.aicpa-cima.com/resources/download/technical-correction-section-529-plans-interpretation
1.000.010	Revised August 2022	December 31, 2022	www.aicpa-cima.com/resources/download/revisions-related-to-officers-directors-and-beneficial-owners
1.120.010	Revised August 2022	December 31, 2022	www.aicpa-cima.com/resources/download/revisions-related-to-officers-directors-and-beneficial-owners
1.285.010	Revised August 2022	December 31, 2022	www.aicpa-cima.com/resources/download/revisions-related-to-officers-directors-and-beneficial-owners
1.180.010 and 2.180.010	Added May 2022	June 30, 2023	www.aicpa-cima.com/resources/download/new-interpretations-and-related-revisions-responding-to-noncompliance-with-laws-and-regulations
1.000.020 and 2.000.020	Revised	December 15, 2014	www.aicpa-cima.com/resources/download/new-interpretations-and-related-revisions-responding-to-noncompliance-with-laws-and-regulations
1.295.113	Added May 2022	December 31, 2022	www.aicpa-cima.com/resources/download/new-interpretation-assisting-attest-clients-with-implementing-accounting-standards
1.230.010	Revised	December 31, 2022	www.aicpa-cima.com/news/download/unpaid-fees-revised-ethics-interpretation
0.400.06	Revised	December 31, 2022	www.aicpa-cima.com/resources/download/revised-definition-and-interpretations-loans-acquisitions-and-other-transactions
1.210.010	Revised	December 31, 2022	www.aicpa-cima.com/resources/download/revised-definition-and-interpretations-loans-acquisitions-and-other-transactions
1.224.010	Revised	December 31, 2022	www.aicpa-cima.com/resources/download/revised-definition-and-interpretations-loans-acquisitions-and-other-transactions

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Appendix C — Revision History			
Citation	**Action**	**Effective Date**	**Official Release**
1.260.010	Revised	December 31, 2022	www.aicpa-cima.com/resources/download/revised-definition-and-interpretations-loans-acquisitions-and-other-transactions
1.260.020	Revised	December 31, 2022	www.aicpa-cima.com/resources/download/revised-definition-and-interpretations-loans-acquisitions-and-other-transactions
1.270.010	Revised	December 31, 2022	www.aicpa-cima.com/resources/download/revised-definition-and-interpretations-loans-acquisitions-and-other-transactions
0.600.030.03	Added December 2021	Effective November 16, 2021	www.aicpa-cima.com/resources/download/2021-temporary-enforcement-policy-amendments-of-sec-rule-2-01-of-regulation-s-x
1.275.007	Added March 2021	November 30, 2021	www.aicpa-cima.com/news/download/staff-augmentation-arrangements
1.224.010	Revised	November 30, 2021	www.aicpa-cima.com/news/download/staff-augmentation-arrangements
1.297.020	Revised	November 30, 2021	www.aicpa-cima.com/news/download/staff-augmentation-arrangements
1.295.010	Revised	November 30, 2021	www.aicpa-cima.com/news/download/staff-augmentation-arrangements
1.400.200	Revised	July 31, 2021	www.aicpa-cima.com/resources/download/revised-records-requests-interpretation-et-sec-1-400-200-under-the-acts-discreditable-rule-et-sec-1-400-001
0.600.030	Added January 2021	Effective December 21, 2020	www.aicpa-cima.com/resources/download/2021-temporary-enforcement-policy-amendments-of-sec-rule-2-01-of-regulation-s-x
1.295.145	Revised	Effective January 1, 2023	
1.224	Revised	Effective January 1, 2021	
1.224.020	Revised	Effective for years beginning after December 15, 2021	
0.200.030	Retain Prior Code References and Appendix D	February 12, 2019	n/a
1.700.110	Added December 2018	Effective December 31, 2018	
1.260.040	Revised December 2018	Effective for fiscal years beginning after December 2020, early implementation allowed	

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Appendix C — Revision History			
Citation	**Action**	**Effective Date**	**Official Release**
1.224.010.02*e*	Revised December 2018	Effective December 31, 2018	
1.295.143	Revised Effective Date	Effective July 1, 2019	The *Journal of Accountancy* posted an online news story on August 14, 2018.
0.400.12	Technical Correction, July 2018	Effective July 31, 2018	
1.297.020.05*a*	Technical Correction, July 2018	Effective July 31, 2018	
0.400.03	Revised	Effective December 31, 2017	
0.400.07	Revised	Effective December 31, 2017	
0.400.26	Revised	Effective December 31, 2017	
0.400.27	Revised	Effective December 31, 2017	
0.400.39	Revised	Effective December 31, 2017	
0.400.41	Revised	Effective December 31, 2017	
1.000	Revised	Effective December 31, 2017	
1.224.020	Revised	Effective December 31, 2017	
1.275.005	Revised	Effective December 31, 2017	
1.280.040	Revised	Effective December 31, 2017	
1.290.010	Revised	Effective December 31, 2017	
1.295.040	Revised	Effective December 31, 2017	
1.295.120	Revised	Effective December 31, 2017	
1.295.135	Revised	Effective December 31, 2017	
1.295.140	Revised	Effective December 31, 2017	
1.295.150	Revised	Effective December 31, 2017	
1.297.010	Revised	Effective December 31, 2017	
1.400.200	Revised	Effective December 31, 2017	

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Appendix C — Revision History			
Citation	**Action**	**Effective Date**	**Official Release**
1.510.030	Revised	Effective December 31, 2017	
1.510.040	Revised	Effective December 31, 2017	
1.510.050	Revised	Effective December 31, 2017	
1.520.030	Revised	Effective December 31, 2017	
1.520.040	Revised	Effective December 31, 2017	
1.520.050	Revised	Effective December 31, 2017	
1.700.030	Revised	Effective December 31, 2017	
2.130.010	Revised	Effective August 31, 2017	
2.170.010	Addition	Effective August 31, 2017	
1.295.143	Addition	Effective September 1, 2018	
1.110.010.04*n*, *o*, *p*	Technical Correction, August 2016	Effective Upon Revision	
1.700.050	Revised	October 31, 2016	
1.520.080	Addition	Effective for commission or referral fee arrangements entered into on or after January 31, 2017.	
1.400.205	Addition	June 30, 2017. Early implementation allowed.	
1.240.020.01*b*	Technical Correction, June 2016	Effective Upon Revision	
0.400.02 [1.224.010 conforming changes to items *b*, *c*, and *d* of paragraph .02]	Revised October 2015	October 31, 2015	
1.220.040	Added October 2015	January 31, 2016	

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Appendix C — Revision History			
Citation	**Action**	**Effective Date**	**Official Release**
1.275.025 paragraphs .01–.06	Revised April 2015	April 30, 2015	
1.224.010 paragraphs .05–.09	Revised April 2015	April 30, 2015	
0.400.03	Revised April 2015	April 30, 2015	
1.298.010	Added January 2015	March 31, 2016, early implementation allowed	
1.298	Added January 2015	March 31, 2016, early implementation allowed	
0.200.020.06–.07	Revised January 2015	March 31, 2016, early implementation allowed	
Appendix B	Revised October 2014	October 19, 2014	
2.110.010	Revised June 2014	September 30, 2014	
1.110.010	Revised June 2014	September 30, 2014	
0.200.020	Revised June 2014	September 30, 2014	

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Appendix D

Mapping Document

[As of December 31, 2013]

On June 1, 2014, the AICPA issued a codification of the code's principles, rules, *interpretations* and rulings (revised code). To assist users in understanding where the content from the prior code appears in the revised code, this mapping document was created. The first two columns identify the citation and title where the content resided in the prior code and the second two columns identify the citation and title where the content now resides *in the revised code*. The "Prior Code Citations" box *has been left* blank *where* the content did not exist in the prior code and is new to the revised code. "New Titles" that appear in regular roman text are effective December 15, 2014, in bold italic December 15, 2015, and in italic have components that are effective both December 15, 2014, and December 15, 2015.

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Prior Code Citations	Title in Prior Code	New Citation	New Title
		0.100	Overview of the Code of Professional Conduct
Introduction	Composition, Applicability, and Compliance	0.100.010	Principles and Rules of Conduct
Introduction	Other Guidance	0.100.020	Interpretations and Other Guidance
		0.200.010	Structure of the AICPA Code
		0.200.020.01	Application of the AICPA Code
ET section 91	Applicability	0.200.020.02–.05	Application of the AICPA Code
		0.200.030	Citations
		0.200.040	Transition Provisions
		0.200.050	Drafting Conventions
ET section 51	Preamble	0.300.010	Preamble
ET section 52	Article I — Responsibilities	0.300.020	Responsibilities
ET section 53	Article II — The Public Interest	0.300.030	The Public Interest
ET section 54	Article III — Integrity	0.300.040	Integrity
ET section 55	Article IV — Objectivity and Independence	0.300.050	Objectivity and Independence
ET section 56	Article V — Due Care	0.300.060	Due Care
ET section 57	Article VI — Scope and Nature of Services	0.300.070	Scope and Nature of Services
ET section 92	Definitions	0.400	Definitions
ET section 100-1	Conceptual Framework for AICPA Independence Standards — Introduction	0.400.01	Acceptable level
		0.400.01	Acceptable level
ET section 101.20	Application of the Independence Rules to Affiliates — Definitions	0.400.02	Affiliate
		0.400.03	Attest Client
ET section 92.01	Attest engagement	0.400.04	Attest Engagement
ET section 92.02	Attest engagement team	0.400.05	Attest Engagement Team
ET section 101.17	Financial Relationships — Definitions	0.400.06	Beneficially Owned
ET section 92.03	Client	0.400.07	Client
ET section 92.04	Close relative	0.400.08	Close Relative
ET section 92.05	Confidential Client Information	0.400.09	Confidential Client Information
Various locations		0.400.10	Control (s) (led)

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 92.06	Council	0.400.11	Council
ET section 92.07	Covered Member	0.400.12	Covered Member
ET section 101.17	Financial Relationships — Definitions	0.400.13	Direct financial interest
		0.400.14	Employing organization
ET section 101.17	Financial Relationships — Definitions	0.400.15	Financial interest
ET section 101.20	Application of the Independence Rules to Affiliates — Definitions	0.400.16	Financial statement attest client
ET section 92.10	Financial statements	0.400.17	Financial statements
ET section 92.11	Firm	0.400.18	Firm
ET section 92.13	Immediate family	0.400.19	Immediate family
ET section 100-1 paragraph .09	Conceptual Framework for AICPA Independence Standards — Definitions	0.400.20	Impair(ed)(ing)
ET section 100-1 paragraphs .06–.08	Conceptual Framework for AICPA Independence Standards — Definitions	0.400.21	Independence
ET section 101.17	Financial Relationships — Definitions	0.400.22	Indirect financial interest
ET section 92.14	Individual in a position to influence the attest engagement	0.400.23	Individual in a position to influence the attest engagement
ET section 92.15	Institute	0.400.24	Institute
ET section 92.16	Interpretation of a rules of conduct	0.400.25	Interpretation
ET section 92.17	Joint closely held investment	0.400.26	Joint Closely-Held Investments
ET section 92.18	Key position	0.400.27	Key position
ET section 92.09	Financial institution	0.400.28	Lending institution
ET section 92.19	Loan	0.400.29	Loan
ET section 92.20	Manager	0.400.30	Manager
ET section 92.21	Member	0.400.31	Member
ET section 92.22	Member in business	0.400.32	Member in business
ET section 92.23	Network	0.400.33	Network
ET section 92.24	Network Firm	0.400.34	Network Firm
ET section 92.25	Normal Lending Procedures, Terms, and Requirements	0.400.35	Normal lending procedures, terms, and requirements
ET section 92.26	Office	0.400.36	Office
ET section 92.27	Partner	0.400.37	Partner
ET section 92.28	Partner Equivalents	0.400.38	Partner Equivalents
ET section 92.29	Period of the professional engagement	0.400.39	Period of the professional engagement

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 92.31	Professional services	0.400.40	Professional Services
ET section 100-1 paragraph .20	Conceptual Framework for AICPA Independence Standards — Definitions	0.400.41	Public interest entities
ET section 92.30	Practice of public accounting	0.400.42	Public Practice (also referred to as the practice of public accounting)
ET section 100-1 paragraph .20	Conceptual Framework for AICPA Independence Standards — Definitions	0.400.43	Safeguards
ET section 101.02	Interpretation of Rule 101—Application of the Independence Rules to Covered Members Formerly Employed by a Client or Otherwise Associated with a Client	0.400.44	Share-based compensation arrangements
ET section 92.32	Significant influence	0.400.45	Significant influence
ET section 101.05	Performance of nonattest services — Management Responsibilities	0.400.46	Source Documents
ET section 191.224–.225	Use of a Third-Party Service Provider to Assist a Member in Providing Professional Services	0.400.47	Third-party service provider
ET section 291.023–.024	Applicability of General and Technical Standards When Using a Third-Party Service Provider	0.400.47	Third-party service provider
ET section 391.001–.002	Use of a Third-Party Service Provider to Provide Professional Services to Clients or Administrative Support Services to the Member	0.400.47	Third-party service provider
ET section 92.33	Those Charged with Governance	0.400.48	Those Charged With Governance
		0.400.49	Threats
		0.500	Nonauthoritative Guidance
		0.600.010	New and Revised Interpretations and Other Guidance
		0.600.020	Pending Interpretations and Other Guidance
		0.700	Deleted Interpretations and Other Guidance

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Prior Code Citations	Title in Prior Code	New Citation	New Title
		1.000	Members in Public Practice — Introduction
		1.000.010	***Conceptual Framework for Members in Public Practice***
		1.000.020	Members in Public Practice—Ethical Conflicts
ET section 102.01	Integrity and Objectivity	1.100.001	Integrity and Objectivity Rule
		1.100.005	*Integrity and Objectivity Rule — Application of the Conceptual Framework for Members in Public Practice and the Ethical Conflicts*
ET section 102.03	Conflicts of Interest	1.110.010	Conflicts of Interest
ET section 191.186–.187	Service on Board of Directors of Federated Fund-Raising Organization	1.110.010.01j	Conflicts of Interest
ET section 191.198–.199	Member Providing Services for Company Executives	1.110.010.01k	Conflicts of Interest
ET section 191.220–.221	Member is Connected With an Entity That has a Loan to or From a Client	1.110.010.01l	Conflicts of Interest
ET section 191.170–.171	Bank Director	1.110.020	Director Positions
ET section 191.226–.227	Acceptance or Offering of Gifts or Entertainment	1.120.010	Offering or Accepting Gifts or Entertainment
ET section 102.02	Knowing misrepresentations in the preparation of financial statements or records	1.130.010	Knowing Misrepresentations in the Preparation of Financial Statements or Records
ET section 102.05	Subordination of judgment by a member	1.130.020	Subordination of Judgment
ET section 102.07	Professional Services involving client advocacy	1.140.010	Client Advocacy
ET section 191.224–.225	Use of a Third-Party Service Provider to Assist a Member in Providing Professional Services	1.150.040	Use of a Third-Party Service Provider
ET section 101.01	Rule 101 — Independence	1.200.001	Independence Rule

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 101.02	Interpretation of Rule 101 — Other Considerations	1.200.005.01–.02	Application of the Conceptual Framework for Independence and Ethical Conflicts Interpretation
		1.200.005.03	Application of the Conceptual Framework for Independence and Ethical Conflicts Interpretation
ET section 101.02	Interpretation of Rule 101 — Other Considerations	1.210.010.01	Conceptual Framework for Independence
ET section 100-1	Conceptual Framework for AICPA Independence Standards — Introduction	1.210.010.02–.08	Conceptual Framework for Independence
ET section 101.02	Interpretation of Rule 101 — Other Considerations	1.210.010.09	Conceptual Framework for Independence
ET section 100-1	Conceptual Framework for AICPA Independence Standards — Introduction	1.210.010.10–.21	Conceptual Framework for Independence
ET section 101.19	Network and network firms	1.220.010.01–.05	Network and Network Firms
ET section 101.19	Network and network firms — Characteristics of a Network	1.220.010.06–.19	Characteristics of a Network
ET section 101.16	The effect of alternative practice structures on the applicability of independence rules	1.220.020	Alternative Practice Structures
ET section 191.142–.143	Use of Nonindependent CPA Firm on an Engagement	1.220.030	Use of a Nonindependent CPA Firm on an Engagement
ET section 101.20	Application of the Independence Rules to Affiliates	1.224.010	Client Affiliates
ET section 101.12	The effect of independence of relationships with entities included in the governmental financial statements	1.224.020	Entities Included in State and Local Government Financial Statements
ET section 191.200–.201	Actions Permitted When Independence is Impaired	1.226.010	Consenting to the Use of a Previously Issued Report
ET section 191.188–.189	Indemnification Clause in Engagement Letters	1.228.010	Indemnification of a Covered Member
ET section 191.204–.205	Indemnification of a Client	1.228.020	Indemnification of an Attest Client

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 191.190–.191	Agreement with Attest Client to Use ADR Techniques	1.228.030.01–.02	Alternative Dispute Resolution
ET section 191.192–.193	Commencement of ADR Proceeding	1.228.030.03	Alternative Dispute Resolution
New		1.230.010.01	Unpaid Fees
ET section 191.103–.104	Unpaid Fees	1.230.010.02–.03	Unpaid Fees
New		1.230.020	Fees and Other Types of Remuneration
ET section 101.02(A)(1)	Interpretation of Rule 101-A1	1.240.010.01–.02	Overview of Financial Interests
ET section 101.17	Financial Relationships — Financial Interests	1.240.010.01–.02	Overview of Financial Interests
ET section 101.02(B)	Interpretation of Rule 101-B	1.240.010.03	Overview of Financial Interests
ET section 101.17	Financial Relationships — Unsolicited Financial Interest	1.240.020	Unsolicited Financial Interests
ET section 101.17	Financial Relationships — Mutual Funds	1.240.030	Mutual Funds
ET section 101.17	Financial Relationships — Retirement, Savings, Compensation, or Similar Plans	1.240.040	Retirement, Savings, Compensation, or Similar Plans
ET section 101.17	Financial Relationships — Partnerships	1.240.050	Partnerships
ET section 101.17	Financial Relationships — Limited Liability Companies	1.240.060	Limited Liability Companies
ET section 101.17	Financial Relationships — Section 529 Plans	1.240.070	Section 529 Plans
ET section 191.021–.022	Member Designated to Serve as Executor or Trustee	1.245.010.01	Trustee or Executor
ET section 101.02(A)(2)	Interpretation of Rule 101-A2	1.245.010.02	Trustee or Executor
ET section 101.17	Financial Relationships — Trust Investments	1.245.020	Trust Investments
ET section 191.214–.215	Participation in Employee Benefit Plan Sponsored by Client	1.250.010.01	Plan is an Attest Client or is Sponsored by an Attest Client
ET section 101.17	Financial Relationships — Retirement, Savings, Compensation, or Similar Plans	1.250.010.02	Plan is an Attest Client or is Sponsored by an Attest Client
ET section 101.04	Employment or Association with Attest Clients	1.250.020	Former Partners and Professional Employees

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Prior Code Citations	Title in Prior Code	New Citation	New Title
			Participation in a Firm-Sponsored Plan
ET section 191.140–.141	Member's Depository Relationship With Client Financial Institution	1.255.010	Depository Accounts
ET section 191.081–.082	Financial Services Company Client Has Custody of a Member's Assets	1.255.020	Brokerage and Other Accounts
ET section 101.17	Financial Relationships — Insurance Products	1.257.010	Insurance Policies with No Investment Option
ET section 101.17	Financial Relationships — Insurance Products	1.257.020	Insurance Policies with Investment Options
ET section 101.17	Financial Relationships — Insurance Products	1.257.030	Insurer Undergoes Demutualization
ET section 101.02(A)(4)	Interpretation of Rule 101-A4	1.260.010	Loans
ET section 101.07	Loans from financial institution clients and related terminology	1.260.020	Loans and Leases with Lending Institutions
ET section 191.150–.151	Membership in Client Credit Union	1.260.020	Loans and Leases with Lending Institutions
ET section 191.134–.135	Servicing of Loan	1.260.030	Servicing of a Loan
ET section 191.182–.183	Member Leasing Property to or From Client	1.260.040	Leases
ET section 191.220–.221	Member is Connected With an Entity That has a Loan to or From a Client	1.260.050	Association with an Entity that has a Loan To or From an Attest Client
ET section 101.14	Independence and cooperative arrangements with clients	1.265.010	Cooperative Arrangements with Attest Clients
ET section 101.02(A)(3)	Interpretation of Rule 101-A3	1.265.020.01	Joint Closely-Held Investments
ET section 191.184–.185	Joint Interest in Vacation Home	1.265.020.02	Joint Closely-Held Investments
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family	1.270.010	Immediate Family Members
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Permitted Employment	1.270.020.01–.03	Immediate Family Member is Employed by the Attest Client

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 101.02	Interpretation of Rule 101 — Grandfathered Employment Relationships	1.270.020.04	Immediate Family Member is Employed by the Attest Client
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Employee Benefits Plans Other Than Certain Share-Based Arrangements or Nonqualified Deferred Compensation Plans	1.270.030	Immediate Family Member Participation in an Employee Benefit Plan That Is an Attest Client or Is Sponsored by an Attest Client (Other than Certain Share-Based Arrangements or Nonqualified Deferred Compensation Plans)
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Employee Benefits Plans Other Than Certain Share-Based Arrangements or Nonqualified Deferred Compensation Plans	1.270.040	Immediate Family Member Participation in an Employee Benefit Plan With Financial Interests in an Attest Client
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Share-Based Compensation Arrangements Resulting in Beneficial Financial Interests in Attest Clients	1.270.050	Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Beneficially Owned Financial Interests in Attest Clients
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Share-Based Compensation Arrangements Resulting in Rights to Acquire Shares in an Attest Client	1.270.060	Immediate Family Member Participation in Share-Based Compensation Arrangements Resulting in Rights to Acquire Shares in an Attest Client
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Share-Based Compensation Arrangements Based Upon Stock Appreciation	1.270.070	Immediate Family Member Participation in Share-Based Compensation Arrangements Based Upon Stock Appreciation

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Covered Member's Immediate Family — Nonqualified Deferred Compensation Plans	1.270.080	Immediate Family Member Participation in a Nonqualified Deferred Compensation Plan
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to a Close Relatives	1.270.100.01–.03	Close Relatives
ET section 101.02	Interpretation of Rule 101 — Grandfathered Employment Relationships	1.270.100.04	Close Relatives
ET section 101.02(C)	Interpretation of Rule 101-C	1.275.005.01–.02	Simultaneous Employment or Association with an Attest Client
ET section 101.21	Permitted Employment With Client Educational Institution	1.275.005.03	Simultaneous Employment or Association with an Attest Client
ET section 101.06	Honorary directorships and trusteeships of not-for-profit organization	1.275.010	Honorary Director or Trustee of a Not-for-Profit Organization
ET section 191.144–.145	Member on Advisory Board of Client	1.275.015	Member of Advisory Board
ET section 191.039–.040	Member Serving on Governmental Advisory Unit	1.275.020	Member of Governmental Advisory Committee
ET section 191.164–.165	Campaign Treasurer	1.275.025	Campaign Treasurer
ET section 191.027–.028	Member on Board of Federated Fund-Raising Organization	1.275.030	Member of Federated Fund-Raising Organization
ET section 191.128–.129	Member Serves on Board of Organization for Which Client Raises Funds	1.275.035	Member of Organization that Receives Funds From Fund-Raising Organization
ET section 101.02	Interpretation of Rule 101 — Application of the Independence Rules to Covered Members Formerly Employed by a Client or Otherwise Associated with a Client	1.277.010	Former Employment or Association with an Attest Client
ET section 101.04	Employment or Association with Attest Clients — Considering Employment or Association with the Client	1.279.010	Considering Employment or Association with an Attest Client

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 101.04	Employment or Association with Attest Clients	1.279.020	Subsequent Employment or Association with an Attest Client
ET section 191.033–.034	Member of Social Club	1.280.010	Member of a Social Club
ET section 191.003–.004	Association Membership	1.280.020	Member of a Trade Association
ET section 191.061–.062	Performance of Services for CIRAs, Including Cooperatives, Condominium Associations, Planned Unit Developments, Homeowners Associations, and Timeshare Developments	1.280.030	Member of a Common Interest Realty Association
ET section 191.150–.151	Membership in Client Credit Union	1.280.040	Member of a Credit Union
ET section 191.228–.229	Acceptance or Offering of Gifts and Entertainment to or From an Attest Client	1.285.010	Offering or Accepting Gifts or Entertainment
ET section 101.08	The effect of actual or threatened litigation on independence	1.290.010	Actual or Threatened Litigation
ET section 101.05	Performance of nonattest services — Introduction and Engagements Subject to Independence Rules of Certain Regulatory Bodies	1.295.010	Scope and Applicability of Nonattest Services
ET section 101.05	Cumulative Effect Providing Multiple Nonattest Services	1.295.020	Cumulative Effect on Independence When Providing Multiple Nonattest Services
ET section 101.05	Performance of nonattest services — Management Responsibilities	1.295.030	Management Responsibilities
ET section 101.05	Performance of nonattest services — General Requirements	1.295.040	General Requirements for Performing Nonattest Services
ET section 101.05	Performance of nonattest services — General Requirements	1.295.050	Documentation Requirements When Providing Nonattest Services
ET section 101.05	Performance of nonattest services — Management Responsibilities	1.295.105	Advisory Services
ET section 191.015–.016	Member Providing Advisory Services	1.295.105	Advisory Services
ET section 101.05	Performance of nonattest services — Apprais-	1.295.110	Appraisal, Valuation, and Actuarial Services

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Prior Code Citations	Title in Prior Code	New Citation	New Title
	al, Valuation and Actuarial Services		
ET section 101.05	Performance of nonattest services — Benefit Plan Administration	1.295.115	Benefit Plan Administration
ET section 101.05	Performance of nonattest services — Bookkeeping	1.295.120	Bookkeeping, Payroll, and Other Disbursements
ET section 101.05	Performance of nonattest services — Nontax Disbursements	1.295.120	Bookkeeping, Payroll, and Other Disbursements
ET section 101.05	Performance of nonattest services — Business Risk Consulting	1.295.125	Business Risk Consulting
ET section 101.05	Performance of nonattest services — Corporate Finance — Consulting or Advisory	1.295.130	Corporate Finance Consulting
ET section 101.05	Performance of nonattest services — Executive or employee search	1.295.135	Executive or Employee Recruiting
ET section 101.05	Performance of nonattest services — Forensic Accounting Services	1.295.140	Forensic Accounting
ET section 101.05	Performance of nonattest services — Information Systems — Design, Installation or integration	1.295.145	Information Systems Design, Implementation, or Integration
ET section 101.05	Performance of nonattest services — Internal Audit Assistance Services	1.295.150	Internal Audit
ET section 101.05	Performance of nonattest services — Investment — Advisory or Management	1.295.155	Investment Advisory or Management
ET section 101.05	Performance of nonattest services — Tax Compliance Services	1.295.160.01–.05, .07	Tax Services
		1.295.160.06	Tax Services — Power of Attorney
ET section 101.13	Modified Application of Rule 101 for Engagements Performed in Accordance with Statements on Standards for Attestations Engagements	1.297.010	Application of the Independence Rule to Engagements Performed in Accordance with Statements on Standards for Attestation Engagements
ET section 101.13	Modified Application of Rule 101 for Engagements Performed in	1.297.020	Agreed-Upon Procedure Engagements Per-

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Prior Code Citations	Title in Prior Code	New Citation	New Title
	Accordance with Statements on Standards for Attestations Engagements — AUP Engagements		formed in Accordance with SSAEs
ET section 101.13	Modified Application of Rule 101 for Engagements Performed in Accordance with Statements on Standards for Attestations Engagements	1.297.030	Engagements, Other Than AUPs, Performed in Accordance with SSAEs
ET section 201.01	General Standards	1.300.001	General Standards Rule
New		1.300.005	*General Standards Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 201.02	Competence	1.300.010	Competence
ET section 291.017–.018	Supervision of Technical Specialist on Management Consulting Services Engagements	1.300.020	Supervision of a Specialist on Consulting Engagements
ET section 291.019–.020	Submission of Financial Statements by a Member in Public Practice	1.300.030	Submission of Financial Statements
ET section 291.015–.016	Subcontractor Selection for Management Consulting Service Engagements	1.300.040	Use of a Third-Party Service Provider
ET section 291.023–.024	Applicability of General and Technical Standards When Using a Third-Party Service Provider	1.300.040	Use of a Third-Party Service Provider
ET section 202.01	Compliance with Standards	1.310.001	Compliance with Standards Rule
		1.310.005	*Compliance with Standards Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 203.01	Accounting Principles	1.320.001	Accounting Principles Rule
		1.320.005	*Accounting Principles Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 203.05	Responsibility of employees for the preparation of financial statements in conformity with GAAP	1.320.010	Responsibility for Affirming that Financial Statements Are in Conformity With the Applicable Financial Reporting Framework
ET section 203.03	Status of FASB, GASB and FASAB interpretations	1.320.020	Status of Financial Accounting Standards Board, Governmental Accounting Standards Board, Federal Accounting Standards Advisory Board, and International Accounting Standards Board Interpretations
ET section 203.02	Departures from Generally Accepted Accounting Principles	1.320.030	Departures From Generally Accepted Accounting Principles
ET section 203.06	Financial Statements Prepared Pursuant to Financial Reporting Frameworks Other than GAAP	1.320.040	Financial Statements Prepared Pursuant to Financial Reporting Frameworks Other than GAAP
ET section 501.01	Acts Discreditable	1.400.001	Acts Discreditable Rule
		1.400.005	*Acts Discreditable Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 501.03	Discrimination and Harassment in Employment Practices	1.400.010	Discrimination and Harassment in Employment Practices
ET section 501.07	Solicitation or disclosure of CPA examination questions and answers	1.400.020	Solicitation or Disclosure of CPA Examination Questions and Answers
ET section 501.08	Failure to file tax returns or pay tax liability	1.400.030	Failure to File a Tax Return or Pay a Tax Liability
ET section 501.05	Negligence in the preparation of financial statements or records	1.400.040	Negligence in the Preparation of Financial Statements or Records
ET section 501.06	Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies	1.400.050	Governmental Bodies, Commissions, or Other Regulatory Agencies
ET section 501.04	Failure to follow standards and/or procedures or other requirements in governmental audits	1.400.055	Governmental Audits

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 501.09	Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies on indemnification and limitation of liability provisions in connection with audit and other attest services	1.400.060	Indemnification and Limitation of Liability Provisions
ET section 501.10	Confidential Information Obtained From Employment or Volunteer Activities	1.400.070	Confidential Information Obtained from Employment or Volunteer Activities
		1.400.090	False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services
ET section 501.12	Use of CPA Credential	1.400.100	Use of the CPA Credential
ET section 501.02	Response to Requests by Clients and Former Clients for Records — Terminology	1.400.200.01–.05, .07–.10	Records Request
ET section 591.377–.378	Requests for Records Pursuant to Interpretation 501-1	1.400.200.06	Records Request
		1.400.200.11	Records Request
ET section 591.381–.382	Member Removing Client Files From an Accounting Firm	1.400.210.01	Removing Client Files or Proprietary Information From a Firm
		1.400.210.02	Removing Client Files or Proprietary Information From a Firm
ET section 391.027–.028	Use of Confidential Information on Management Consulting Service Engagements	1.400.240	Use of Confidential Information From Nonclient Sources
		1.400.240	Use of Confidential Information From Nonclient Sources
		1.500.008	Unpaid Fees
ET section 302.01	Contingent Fees	1.510.001	Contingent Fee Rule
		1.510.005	*Contingent Fee Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 302.02	Contingent Fees in tax matters	1.510.010	Tax Matters

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 391.033–.034	Definition of the Receipt of a Contingent Fee or a Commission	1.510.020	Receipt of Contingent Fee
ET section 391.037–.038	Receipt of Contingent Fees or Commissions by Member's Spouse	1.510.030	Services Performed by a Member's Spouse for a Contingent Fee
ET section 391.049–.050	Commission and Contingent Fee Arrangements with Nonattest Client	1.510.040	Contingent Fee Arrangements with an Investment Advisory Services Nonattest Client that is Related to a Client
ET section 391.047–.048	Investment Advisory Services	1.510.050	Investment Advisory Services
ET section 503.01	Commissions and Referral Fees	1.520.001	Commissions and Referral Fee Rule
		1.520.005	*Commissions and Referral Fee Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 591.367–.368	Definition of the Receipt of a Contingent Fee or a Commission	1.520.020	Receipt of Commission
ET section 591.373–.374	Receipt of Contingent Fees or Commissions by Member's Spouse	1.520.030	Services Performed by a Member's Spouse for a Commission
ET section 591.375–.376	Referral of Products of Others	1.520.040	Referral of Products of Others
ET section 591.383–.384	Commission and Contingent Fee Arrangements with Nonattest Client	1.520.050	Commission Arrangements with an Investment Advisory Services Nonattest Client that is Related to a Client
ET section 591.369–.370	Sale of Products to Clients	1.520.060	Sale of Products to Clients
ET section 591.371–.372	Billing for Subcontractor's Services	1.520.070	Billing for a Subcontractor's Services
ET section 502.01	Advertising and other forms of solicitation	1.600.001	Advertising and Other Forms of Solicitation Rule
		1.600.005	*Advertising and Other Forms of Solicitation Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 502.06	Engagements obtained through efforts of third parties	1.600.010.01	False, Misleading, or Deceptive Acts in Advertising or Solicitations

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Prior Code Citations	Title in Prior Code	New Citation	New Title
ET section 502.03	False, Misleading, or Deceptive Acts in Advertising or Solicitation	1.600.010.02	False, Misleading, or Deceptive Acts in Advertising or Solicitations
ET section 591.365–.366	Use of the AICPA Personal Financial Specialist Designation	1.600.030	Use of AICPA-Awarded Designation
ET section 502.07	Use of CPA Credential	1.600.100	Use of the CPA Credential
ET section 301.01	Confidential Client Information	1.700.001	Confidential Client Information Rule
		1.700.005	*Confidential Client Information Rule — Application of the Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 391.011–.012	Revealing Client Information to Competitors	1.700.010	Client Competitors
ET section 391.029–.030	Earlier Similar Management Consulting Service Study with Negative Outcome	1.700.020.01	Disclosing Information From Previous Engagements
ET section 391.005–.006	Information to Successor Accountant About Tax Return Irregularities	1.700.020.02–.03	Disclosing Information From Previous Engagements
ET section 391.031–.032	Disclosure of Confidential Client Information	1.700.030.01–.02	Disclosing Information to Persons or Entities Associated with Clients
ET section 391.041–.042	Member Providing Services for Company Executives	1.700.030.03	Disclosing Information to Persons or Entities Associated with Clients
ET section 391.001–.002	Use of a Third-Party Service Provider to Provide Professional Services to Clients or Administrative Support Services to the Member	1.700.040	Disclosing Information to a Third-Party Service Provider
ET section 301.04	Confidential information and the purchase, sale, or merger of a practice	1.700.050	Disclosing Client Information in Connection with a Review of the Member's Practice
ET section 391.003–.004	Disclosure of Client Information to Trade Associations	1.700.060	Disclosure of Client Information to Third Parties
ET section 391.039–.040	Disclosure of Confidential Client Information to Professional Liability Insurance Carrier	1.700.070	Disclosing Client Information During Litigation
ET section 391.045–.046	Disclosure of Confidential Client Information in Legal or Alternative	1.700.070	Disclosing Client Information During Litigation

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Prior Code Citations	Title in Prior Code	New Citation	New Title
	Dispute Resolution Proceedings		
ET section 391.035–.036	Bank Director	1.700.080	Disclosing Client Information in Director Positions
ET section 391.013–.014	Revealing Names of Clients	1.700.090	Disclosing Client Names
		1.700.100	Disclosing Confidential Client Information as a Result of a Subpoena or Summons
ET section 505.01	Form of Organization and Name	1.800.001	Form of Organization and Name Rule
		1.800.005	*Form of Organization and Name Rule — Application of Conceptual Framework for Members in Public Practice and Ethical Conflicts*
ET section 505.03	Application of rules of conduct to members who own a separate business	1.810.010.01–.03	Ownership of a Separate Business
ET section 591.275–.276	Partner Having Separate Proprietorship	1.810.010.04	Ownership of a Separate Business
ET section 591.273–.274	Nonproprietary Partners	1.810.020	Partner Designation
ET section 591.005–.006	Employment by Non-CPA Firm	1.810.030	A Member's Responsibility for Nonmember Practitioners
ET section 591.281–.282	Responsibility for Non-CPA Partner	1.810.030	A Member's Responsibility for Nonmember Practitioners
ET section 591.271–.272	Audit with Former Partner	1.810.040	Attest Engagement Performed with a Former Partner
ET section 505.04	Application of rule 505 to alternative practice structures	1.810.050	Alternative Practice Structures
ET section 591.289–.290	Firm Name of Merged Partnerships	1.820.010	Use of a Retired Partner's Name
ET section 591.379–.380	Non-CPA Partner	1.820.020	A Practice with Non-CPA Partners
ET section 505.05	Misleading Firm Names	1.820.030	Misleading Firm Names
ET section 505.06	Common Network Brand in Firm Name	1.820.040	Use of a Common Brand Name in Firm Name
		2.000	Members in Business — Introduction

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Prior Code Citations	Title in Prior Code	New Citation	New Title
		2.000.010	***Conceptual Framework for Members in Business***
		2.000.020	Members in Business—Ethical Conflicts
ET section 102.01	Integrity and Objectivity	2.100.001	Integrity and Objectivity Rule
		2.100.005	*Integrity and Objectivity Rule — Application of the Conceptual Framework for Members in Business and Ethical Conflicts*
ET section 102.03	Conflicts of Interest	2.110.010	Conflicts of Interest
ET section 191.226–.227	Acceptance or Offering of Gifts or Entertainment	2.120.010	Offering or Accepting Gifts or Entertainment
ET section 102.02	Knowing misrepresentations in the preparation of financial statements or records	2.130.010	Knowing Misrepresentations in the Preparation of Financial Statements or Records
ET section 102.05	Subordination of judgment by a member	2.130.020	Subordination of Judgment
ET section 102.04	Obligations of a member to his or her employer's external accountant	2.130.030	Obligation of a Member to His or Her Employer's External Accountant
ET section 102.06	Applicability of rule 102 to members performing educational services	2.160.010	Educational Services
ET section 201.01	General Standards	2.300.001	General Standards Rule
		2.300.005	*General Standards Rule — Application of the Conceptual Framework for Members in Business and Ethical Conflicts*
ET section 201.02	Competence	2.300.010	Competence
ET section 291.019–.020	Submission of Financial Statements by a Member in Public Practice	2.300.030	Submission of Financial Statements
ET section 202.01	Compliance with Standards	2.310.001	Compliance with Standards Rule
		2.310.005	*Compliance with Standards Rule — Application of the Conceptual Framework for Members in Business and Ethical Conflicts*
ET section 203.01	Accounting Principles	2.320.001	Accounting Principles Rule

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Prior Code Citations	Title in Prior Code	New Citation	New Title
		2.320.005	*Accounting Principles Rule — Application of the Conceptual Framework for Members in Business and Ethical Conflicts*
ET section 203.05	Responsibility of employees for the preparation of financial statements in conformity with GAAP	2.320.010	Responsibility for Affirming that Financial Statements Are in Conformity With the Applicable Financial Reporting Framework
ET section 203.03	Status of FASB, GASB and FASAB interpretations	2.320.020	Status of Financial Accounting Standards Board, Governmental Accounting Standards Board, Federal Accounting Standards Advisory Board, and International Accounting Standards Board Interpretations
ET section 203.02	Departures from Generally Accepted Accounting Principles	2.320.030	Departures From Generally Accepted Accounting Principles
ET section 203.06	Financial Statements Prepared Pursuant to Financial Reporting Frameworks Other than GAAP	2.320.040	Financial Statements Prepared Pursuant to Financial Reporting Frameworks Other than GAAP
ET section 501.01	Acts Discreditable	2.400.001	Acts Discreditable Rule
New		2.400.005	*Acts Discreditable Rule — Application of the Conceptual Framework for Members in Business and Ethical Conflicts*
ET section 501.03	Discrimination and Harassment in Employment Practices	2.400.010	Discrimination and Harassment in Employment Practices
ET section 501.07	Solicitation or disclosure of CPA examination questions and answers	2.400.020	Solicitation or Disclosure of CPA Examination Questions and Answers
ET section 501.08	Failure to file tax returns or pay tax liability	2.400.030	Failure to File a Tax Return or Pay a Tax Liability
ET section 501.05	Negligence in the preparation of financial statements or records	2.400.040	Negligence in the Preparation of Financial Statements or Records
ET section 501.06	Failure to follow requirements of governmental bodies, commissions, or	2.400.050	Governmental Bodies, Commissions, or Other Regulatory Agencies

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Prior Code Citations	Title in Prior Code	New Citation	New Title
	other regulatory agencies		
ET section 501.09	Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies on indemnification and limitation of liability provisions in connection with audit and other attest services	2.400.060	Indemnification and Limitation of Liability Provisions
ET section 501.10	Confidential Information Obtained From Employment or Volunteer Activities	2.400.070	Confidential Information Obtained from Employment or Volunteer Activities
ET section 501.11	False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services	2.400.090	False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services
ET section 501.12	Use of CPA Credential	2.400.100	Use of the CPA Designation
		3.000	Other Members — Introduction
		3.000.030	Applicability
ET section 501.01	Acts Discreditable	3.400.001	Acts Discreditable Rule
ET section 501.03	Discrimination and Harassment in Employment Practices	3.400.010	Discrimination and Harassment in Employment Practices
ET section 501.07	Solicitation or disclosure of CPA examination questions and answers	3.400.020	Solicitation or Disclosure of CPA Examination Questions and Answers
ET section 501.08	Failure to file tax returns or pay tax liability	3.400.030	Failure to File a Tax Return or Pay a Tax Liability
ET section 501.10	Confidential Information Obtained From Employment or Volunteer Activities	3.400.070	Confidential Information Obtained from Former Employment or Previous Volunteer Activities
		3.400.090	False, Misleading, or Deceptive Acts in Promoting or Marketing Services
ET section 501.12	Use of CPA Credential	3.400.100	Use of the CPA Credential

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SELENA BOSTON, *et al.*,

Plaintiffs,

v.

MICAH SIERRA KATT WILLIAMS, *et al.*,

Defendants.

CIVIL ACTION
NO. 1:23-cv-00752-WMR

In re: Loletha Hale, Esq.
Attorney for Plaintiffs

(Ancillary proceeding on Rule 11 violation)

ORDER

On September 29, 2025, Plaintiffs' counsel, Loletha Hale, appeared before the Court for an evidentiary hearing to show cause why she should not be found in violation of Federal Rule of Civil Procedure 11(b) in this case and, if so, whether a sanction should be imposed. *See* Fed. R. Civ. P. 11(c)(1). Ms. Hale was present at the hearing and presented argument, but she chose not to present any evidence. After considering her argument, together with all relevant matters of record, the Court concludes that Ms. Hale violated Rule 11(b)(2) and that a sanction is warranted for the reasons set forth herein.

RULE 11 VIOLATION

> Rule 11 of the Federal Rule of Civil Procure provides, in relevant part:
>
> (b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney … certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> . . .
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law....

Fed. R. Civ. P. 11(b)(2).

In response to Defendant's motion for summary judgment, Ms. Hale filed a brief on behalf of her clients in this case which contained several flawed citations to legal authority. [Doc. 57]. Specifically, an overwhelming majority of the cases cited by Ms. Hale either did not exist, did not support the proposition for which they were cited, or misquoted the authority. [*See* Doc. 59-1 (Exhibit F) for list of flawed citations]. It appears that the brief was generated, at least in part, using artificial intelligence ("AI") technology. When confronted with the citation-related deficiencies of her brief at the hearing on the motion for summary judgment, Ms. Hale explained that she had been distracted with other matters and had asked her daughter (who is not an attorney or paralegal) to draft the brief for her. Ms. Hale

conceded that she had failed to review the brief before it was filed and, therefore, did not catch the citation-related deficiencies.

At the show cause hearing, Ms. Hale stood by her assertion that her filing of the flawed brief was simply an accident and that, upon learning of the citation-related deficiencies, she immediately sought leave from this Court to file an amended brief. Although Ms. Hale contends that there should be no Rule 11 violation because she later submitted an amended brief, the Court notes that her amended brief also contains at least one of the same citation-related deficiencies as her initial brief. Specifically, Ms. Hale again cites to *Scanlan v. Tate Supply, Inc.*, 303 Ga. App. 9 (2010) and *Akuoko v. Martin*, 298 Ga. App. 364 (2009) for the incorrect proposition that the issue of whether a plaintiff exercised due diligence in serving a defendant is a question of fact for the jury. [*See* Doc. 60-2 at 10]. Those cases, however, clearly stand for the opposite — explaining that the issue of diligence is a question of fact for the trial court.[1] *See Scanlan*, 303 Ga. App. at 11; *Akuoko*, 298 Ga. App. at 365.

Based on the foregoing conduct, the Court finds that Ms. Hale has clearly violated Rule 11(b)(2) by presenting pleadings to this Court which contained

[1] The Court notes that, after submitting her amended brief, Ms. Hale filed another motion on behalf of her clients which contained a citation-related deficiency—specifically, that motion cites to *Jenkins v. Roper*, 313 Ga. App. 189 (2011). [*See* Doc. 61 at 4]. However, that case does not appear to exist. The only similar name is *Jenkins v. Roper Corporation*, 185 Ga. App. 219 (1987), and the citation provided by Ms. Hale is for *Jordan v. Jordan*, 313 Ga. App. 189 (2011).

citations to legal authority that either did not exist, did not support the proposition for which they were cited, or misquoted the authority.[2]

SANCTION

As a sanction for the above-referenced conduct, it is hereby **ORDERED** as follows:

- Loletha Hale shall be required to notify all her existing clients in federal cases filed in the Northern District of Georgia of the findings of this Court related to the above-referenced conduct; and
- Loletha Hale shall be required to file a notice to the district court regarding this Court's findings, **along with a copy of this Order**, in all pending and future cases filed in the Northern District of Georgia in which she appears as counsel for a period of five (5) years from the date of this Order.

No monetary sanction shall be imposed at this time. However, Ms. Hale is hereby advised that her failure to abide by the terms of this Order shall be punishable by contempt.

[2] The Court does not find or suggest that the use of AI tools to draft a legal brief is impermissible. What is not allowed, however, is the submission of such a brief without thoroughly checking the AI-generated material for its accuracy. The Court recognizes that mistakes in drafting can happen, but it is Ms. Hale's abdication of her responsibility to ensure that the brief she provided to the Court was accurate and her cavalier attitude regarding her errors that is of most concern to this Court.

IT IS SO ORDERED, this 28th day of October, 2025.

William M. Ray II

WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:25-cv-60630-LEIBOWITZ
CASE NO. 0:25-cv-60646-LEIBOWITZ
CASE NO. 0:25-cv-60647-LEIBOWITZ
CASE NO. 0:25-cv-60712-LEIBOWITZ

BYOPLANET INTERNATIONAL, LLC,

Plaintiff,

v.

PETER JOHANSSON and
CHARLES GILSTRAP,

Defendant.
_____/

BYOPLANET INTERNATIONAL, LLC,

Plaintiff,

v.

JARRED KNECHT,

Defendant.
_____/

BYOPLANET INTERNATIONAL, LLC
and RICHARD O'SHEA,

Plaintiffs,

v.

CHARLES GILSTRAP,

Defendant.
_____/

RICHARD PATRICK MICHAEL O'SHEA,

Plaintiff,

v.

JASON NOVAK,

Defendant.
_____/

ORDER

> "The integrity of judicial proceedings depends upon the ethical obligations of candor and honesty being strictly observed by all parties." *Liteky v. United States*, 510 U.S. 540 (1994) (Scalia, J., concurring).[1]

Two things: (1) The above statement is absolutely correct. (2) the great Justice Antonin Scalia did not write this anywhere in his Opinion of the Court (not concurring) in *Liteky*. A quick review of the U.S. Reports confirms that. But ChatGPT, with the slick, cool authority of instantly-generated pixels on a screen, declares otherwise. Artificial intelligence, indeed.

The proliferation and availability of artificial intelligence ("AI") tools presents a challenge to the legal profession. Lawyers have duties both to their clients and to the courts to present accurate facts and citations to legal authority. When a lawyer presents false information to a court, that lawyer violates his duties. This case presents an important issue (unfortunately one that is occurring more often): what sanctions should a court impose on a lawyer who repeatedly uses false, fake, non-existent, AI-generated legal authorities in the drafting of complaints, motions, and other filings? Here, Plaintiffs' counsel repeatedly regurgitated such "hallucinated" authority in eight separate but related cases. Four of these eight cases are presently before this Court. After considering the factual record, the relevant legal authority, and the threat this rampant conduct poses to the practice of law and the integrity of judicial proceedings, this Court imposes substantial sanctions.

[1] ChatGPT (July 7, 2025, response to query: "scalia quotes on candor").

BACKGROUND

I. Artificial Intelligence

During a bygone era when dinosaurs roamed the earth and the undersigned was in law school (1998), to research cases a student often had to hold a volume of a legal reporter in one's hands. To ensure that all cases cited were good law, students and attorneys employed services like Shepard's Citations. But even in that dark, pre-modern age, stars rose in the distance; online legal sources, such as Westlaw and LexisNexis, came forth to aid lawyers in performing legal research. You didn't have to be Steve Wozniak to understand that these electronic advancements would revolutionize the practice of law (and much else). Gone were the days of spending hours in libraries manually searching for a case and Shepardizing to see every case which cited it.

Now, another star rises—AI—with the potential to revolutionize the legal field (and much else) once again. From Altman to Zuckerberg, we are told that AI has the potential to perform hours of legal research on nearly any topic in seconds. Large language models like ChatGPT offer the promise to employ AI to perform legal research and even draft legal filings, such as briefs and complaints.

However, AI is not yet a match for an actual litigator. Employing the euphemism-du-jour, AI regularly "hallucinates" entire cases and "hallucinates" quotations from real cases. *See* Sara Merken, *AI 'hallucinations' in court papers spell trouble for lawyers*, Reuters, https://www.reuters.com/technology/artificial-intelligence/ai-hallucinations-court-papers-spell-trouble-lawyers-2025-02-18/ (noting AI's "penchant for generating legal fiction in case filings[.]"). This means that when a lawyer asks AI to generate legal research, briefs, or complaints, it may lead to fake cases and/or false quotations that purport to stand for the propositions the lawyer seeks. This is the current particular risk of using AI in real-world litigation. But the lawyer who uses AI blindly also potentially harms others:

> The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023) (Castel, J.).

Thus, a lawyer who wishes to use AI ethically must ensure that the legal propositions and authority generated are trustworthy. The lawyer has a duty to check all the cases and quotations for accuracy. Anything less is to abdicate one's duty, waste legal resources, and lower the public's respect for the legal profession and judicial proceedings.

II. Timeline of Events[2]

Beginning in March of 2025, James Martin Paul, Esq. ("Paul"), counsel for the Plaintiffs in the above-captioned cases and four other related cases filed in Florida courts (eight cases in total), repeatedly used AI to hallucinate cases and quotations in his filings. Indeed, Paul admitted to using generative AI and not checking its outputs in each of the eight related cases. [Transcript of June 17, 2025, Hearing ("H'g Tr.") at 8:18–25, 25:10–19].

On March 12, 2025, Paul filed a Complaint in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida ("the O'Shea Complaint"), Case No. CACE-25-003491, on behalf of Richard Patrick Michael O'Shea ("O'Shea").[3] In the O'Shea Complaint, Paul used AI to

[2] The following timeline is a non-exhaustive recitation of counsel's uses of AI that generated hallucinated cases and quotations.

[3] To be clear, this Court's Order refers to various cases in Florida state court only for background on Paul's actions. This Court's determination of sanctions, described below, is in response only to the actions of Paul before this Court. The Court is not sanctioning Paul for any actions taken in Florida state court.

generate at least two hallucinated cases. [*Richard Patrick Michael O'Shea v. Promark Electronics, Inc., et al.*, Case No. CACE-25-003491, Complaint at 2 (Fla. 17th Cir. Ct.)].

On March 13, 2025, Paul filed a Complaint in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. CACE-25-003582, on behalf of Debt Dynamics, LLC ("the Debt Dynamics Complaint"). In the Debt Dynamics Complaint, Paul used AI to generate at least two hallucinated cases. [*Debt Dynamics, LLC v. Promark Electronics, Inc., et al.*, Case No. CACE-25-003582, Complaint at 4 (Fla. 17th Cir. Ct.)]. In other filings in the Debt Dynamics case, he used AI to generate hallucinated cases, quotations, or parentheticals at least four other times, on May 6, 2025, and May 15, 2025. [*See id.* Plaintiff's Response in Opposition to Defendant Cerebus Capital Management, L.P.'s Motion to Dismiss, filed on May 6, 2025, at 2, 3; Plaintiff's Response in Opposition to Defendant ECI's Motion to Dismiss, filed on May 6, 2025, at 2, 3; Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, filed on May 15, 2025, at 4; Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss and Motion to Strike, filed on May 15, 2025, at 2].

On April 1, 2025, Paul filed a Complaint in one of the above-captioned cases against Charles Gilstrap ("Gilstrap") and Peter Johansson in the Southern District of Florida ("the First Federal Case"). [*ByoPlanet International, LLC v. Peter Johansson and Charles Gilstrap*, Case No. 0:25-cv-60630, ECF No. 1 (S.D. Fla.)]. Then, on April 4, 2025, Paul filed a Complaint against Jarred Knecht ("Knecht") in the Southern District of Florida ("the Second Federal Case"). [*ByoPlanet International, LLC v. Jarred Knecht*, Case No. 0:25-cv-60646, ECF No. 1 (S.D. Fla.)].

On that same day, Defendant Gilstrap removed a case filed by Paul in Florida state court to the Southern District of Florida ("the Third Federal Case"). [*ByoPlanet International, LLC and Richard O'Shea v. Charles Gilstrap*, Case No. 0:25-cv-60647, ECF No. 1 (S.D. Fla.)]. Paul used AI to generate hallucinated cases and quotations in the Third Federal Case Complaint. [*See id.* ECF No. 1-3]. As a

brief example of Paul's use of hallucinated cases, he cited "*Merrill Lynch v. Hagerty*, 808 So. 2d 1266 (Fla. 4th DCA 2002)" for the proposition that "Breach of contract occurs when a party fails to perform their obligations, leading to damages." [*Id.* at 3]. Like Justice Scalia's quote in *Liteky*, the *Merrill Lynch* case does not exist; rather, the citation from the Southern Reporter leads to *Roberts v. State*, 808 So. 2d 1266 (Fla. Dist. Ct. App. 2002). To this Court's knowledge, none of the authority cited in the Complaints filed by Paul in the First and Second Federal Cases were hallucinated; however, Paul admitted at the June 17, 2025 Show Cause Hearing that he used AI to draft the Complaints in the First, Second, and Third Federal Cases. [H'g Tr. at 15:8–16].

On April 14, 2025, Paul filed a Complaint on behalf of O'Shea against Jason Novak ("the Fourth Federal Case"). [*Richard Patrick Michael O'Shea v. Jason Novak*, Case No. 0:25-cv-60712, ECF No. 1]. The Court became aware of this case only after the June 17 Show Cause Hearing and was thus unable to inquire into whether Paul used AI in drafting the Complaint for the Fourth Federal Case. When asked at the hearing about other cases in which he used AI, Paul did not name this case, stating instead "off the top of [his] head" that there were "at least" five cases in which he used AI. [H'g Tr. at 14:7–10].

On April 25, 2025, Gilstrap moved to dismiss the Complaint in the Third Federal Case, claiming that Plaintiffs failed to correctly reference *any* case in the Complaint. [*ByoPlanet International, LLC and Richard O'Shea v. Charles Gilstrap*, Case No. 0:25-cv-60647, ECF No. 14]. From this moment on, there can be no reasonable doubt that Paul was on notice that his use of AI was leading to hallucinated cases and quotations. [*See* H'g Tr. at 9:21–10:2 (The Court: "[Y]ou don't deny that you were on notice on April 25th of misrepresentations of case law, correct?" Attorney Paul: "That is correct.")]. On May 5, 2025, in response to this Motion to dismiss, Paul cited *Smith v. JPMorgan Chase Bank, N.A.*, 2010 WL 2400084, at *2 (S.D. Fla. 2010) for the proposition that "Courts do not dismiss claims over mis-citations or citation errors." [*ByoPlanet International, LLC and Richard O'Shea v. Charles*

Gilstrap, Case No. 0:25-cv-60647, ECF No. 16 at 4]. However, the *Smith* case cited by Paul does not exist; in fact, the citation leads to *Hebert v. Plaquemine Caring, L.L.C.*, 2007-2243, 43 So. 3d 239 (La. App. 1 Cir. 6/16/10). Paul also cited *Hood v. Tompkins*, 197 F. App'x 818, 819 (11th Cir. 2006), a real case, for the proposition that "Rule 11 sanctions require bad faith, not clerical error." [*Id.*]. However, this quote does not appear anywhere in *Hood*, and the case does not discuss whether "clerical errors" are sufficient for Rule 11 sanctions, nor does it discuss "bad faith." *See generally Hood*, 197 F. App'x 818. On May 12, 2025, Gilstrap filed a reply brief, again noting Paul's numerous citations to hallucinated cases and quotations. [*ByoPlanet International, LLC and Richard O'Shea v. Charles Gilstrap*, Case No. 0:25-cv-60647, ECF No. 19].

While all this was going on, on May 7, 2025, Paul filed an appeal to the Fourth District Court of Appeal in Florida in *ByoPlanet International, LLC v. Promark Electronics*, Case No. 4D25-0557 (Fla. Dist. Ct. App.).[4] In that appeal, Paul again used AI to cite hallucinated cases. [*Id.*, Initial Brief at 5, 11, 13, 15, 20 (citing *Castillo v. Deutsche Bank Nat'l Tr. Co.*, 274 So. 3d 1110 (Fla. 3d DCA 2019),[5] *Chowdhury v. Pomeroy*, 901 So. 2d 1005 (Fla. 4th DCA 2005), *Nabulsi v. Nabulsi*, 97 So. 3d 933, 937 (Fla. 4th DCA 2012), *Olson v. Olson*, 95 So. 3d 1150 (Fla. 4th DCA 2012), and *Perkins v. State*, 228 So. 3d 640 (Fla. 1st DCA 2017), which do not exist)]. Paul cited the same hallucinated cases in his Amended Initial Brief on May 8, 2025. [*Id.*, Amended Initial Brief].

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[4] The Initial Brief lists the Appellant as ByoPlanet International, LLC while the Fourth District Court of Appeal website lists the Appellant as Richard Patrick Michael O'Shea.

[5] *Castillo v. Deutsche Bank Nat'l Tr. Co.*, 302 So. 3d 337 (Fla. Dist. Ct. App. 2019), *Castillo v. Deutsche Bank Nat. Tr. Co.*, 89 So. 3d 1069 (Fla. Dist. Ct. App. 2012), and *Castillo v. Deutsche Bank Nat. Tr. Co.*, 57 So. 3d 965, 966 (Fla. Dist. Ct. App. 2011) are real cases, but they have nothing to do with Paul's statement that in *Castillo*, "the court held that knowingly false testimony from an agent or expert—when relied on by the trial court—constituted a fraud sufficient to reopen final judgments." [*ByoPlanet International, LLC v. Promark Electronics*, Case No. 4D25-557, Initial Brief at 20].

On May 9, 2025, in another case in Florida circuit court, Paul filed a motion for protective order in which he cited three more hallucinated cases. [*Promark Electronics Inc. v. ByoPlanet International, LLC, et al.*, Case No. CACE-24-005937, Motion for Protective Order, filed on March 9, 2025, at 2–3 (Fla. 17th Cir. Ct.)]. In that same case one week later, Paul again used AI to generate hallucinated cases, quotations, and references, this time in a response to a motion for sanctions for O'Shea's failure to appear at his scheduled deposition. [*Id.*, Defendant Richard O'Shea's Response in Opposition to Plaintiff Promark Electronics Inc's Motion to Compel Deposition and for Sanctions, filed on May 16, 2025, at 3–4].

On May 14, 2025, in the Second Federal Case, Knecht filed a motion to dismiss the Complaint. [Second Federal Case, ECF No. 9]. The next day, on May 15, 2025, thirteen days before Plaintiff's response was due,[6] Paul filed a response which included numerous AI-generated false quotations and a hallucinated case. [*Id.*, ECF No. 10 (citing *Gracia v. Palm Beach Cnty.*, 112 So. 3d 771, 774 (Fla. 4th DCA 2013), which does not exist)]. On May 22, 2025, Knecht replied to Paul's response and noted the fabricated quotations and hallucinated case. [*Id.*, ECF No. 12].

On May 20, 2025, Gilstrap moved to dismiss the First Federal Case. Just two days later, on May 22, 2025, twelve days before Plaintiff's response was due, Paul filed a response in which he, again, cited hallucinated cases and quotations. [The First Federal Case, ECF No. 32 at 3 (citing *Kaplan v. Kaplan*, 963 So. 2d 933, 938 (Fla. 3d DCA 2007), which does not exist)].

On May 29, the same day this Court entered an Order to Show Cause requiring Paul to state whether he intentionally made misrepresentations to the Court, Paul filed a Motion to Reopen Case in which he cited a fabricated quote from a real case. [Fourth Federal Case, ECF No. 8 at 2 (citing

[6] In the First Federal Case, in a Response to Order to Show Cause, Paul justified his actions by saying that this response "was prepared under time constrain[t]s[,]" a demonstrably false statement as Paul filed his response thirteen days before the deadline. [First Federal Case, ECF No. 36 at 2].

Fla. Physician's Ins. Co. v. Ehlers, 8 F.3d 780, 783 (11th Cir. 1993), for the proposition that Rule 60(b) of the Federal Rules of Civil Procedure should be "liberally construed to do substantial justice"; this quote does not appear in the case)].

Then, on June 10, 2025, in response to an order to show cause regarding the use of AI-fabricated case citations, Paul included fabricated quotations to two real cases. [First Federal Case, ECF No. 38 at 2 (first citing *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017), for the quote that "[t]o exercise its inherent power to sanction, a court must find that the party acted in bad faith"—this quotation does not appear in the case; then citing *Carroll v. TheStreet.com, Inc.*, No. 11-CV-81173, 2014 WL 5474061, at *2 (S.D. Fla. July 10, 2014), for the proposition that the court declined to impose sanctions for incorrect citations where "there was no showing that the error was intentional or calculated to mislead"— this quotation does not appear in the case)].[7]

On June 17, 2025, this Court held a Show Cause Hearing on Paul's repeated use of AI to determine whether he intentionally made misrepresentations to the Court and acted in bad faith. [*See* Second Federal Case, ECF Nos. 13, 18]. At the hearing, Paul admitted that he and a paralegal used "AI-generated drafting procedures[,]" specifically, ChatGPT. [H'g Tr. at 5:12–17, 9:1–5]. Paul stated that he assigned his paralegal with drafting pleadings and briefs which he would "tweak." [*Id.* at 9:3–10]. Paul relied on the paralegal for checking the factual assertions and case law in the filings and assumed that they were proper, but he did not do any "due diligence" himself to check or correct the citations. [*Id.* at 9:10–15]. Paul stated plainly at the hearing: "The majority of some of the citations

[7] In that same response, Paul cited *Sciarretta v. Lincoln Nat'l Life Ins. Co.*, 778 F.3d 1205, 1211 (11th Cir. 2015) for the following quote: "The key to unlocking a court's inherent power is a finding of bad faith." [First Federal Case, ECF No. 38 at 2]. The actual quote appears on page 1212 and states: "The key to unlocking that inherent power is a finding of bad faith." *Sciarretta v. Lincoln Nat. Life Ins. Co.*, 778 F.3d 1205, 1212 (11th Cir. 2015). While a discrepancy exists here, the Court does not conclude that this difference necessitates a finding that AI was used to generate this quotation. The sanctions ordered herein are not based upon this citation.

. . . came from AI-generated software," and those citations were not checked. [H'g Tr. at 12:4–7]. Paul claimed that the last time he used AI was "mid-May[,]" although the timeline of events excavated by the Court belies that assertion. [*Id.* at 10:18–21].

Paul repeatedly stated at the hearing that he took full accountability for his actions and that they were not taken in bad faith, malicious, or intentional. [*See, e.g.,* H'g Tr. at 25:16–19]. This Court strongly disagrees; what happened here constitutes repeated, abusive, bad-faith conduct that cannot be recognized as legitimate legal practice and must be deterred.

LEGAL STANDARD

Federal district courts in the Southern District of Florida base their sanctions of an attorney or a party on four sources: (1) Rule 11 of the Federal Rules of Civil Procedure, (2) the Court's inherent authority, (3) the Local Rules of the Southern District of Florida, and (4) 28 U.S.C § 1927. *See Versant Funding LLC v. Teras Breakbulk Ocean Navigation Enters., LLC*, No. 17-CV-81140, 2025 WL 1440351, at *2–3 (S.D. Fla. May 20, 2025).

A. Rule 11

Courts should rely on the Federal Rules of Civil Procedure for sanctions before turning to their inherent powers. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991). Sanctions are reviewed for abuse of discretion, but *sua sponte* Rule 11 sanctions are reviewed with "particular stringency." *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003); *see Regions Bank v. Kaplan*, No. 17-15478, 2021 WL 4852268, at *8 (11th Cir. Oct. 19, 2021).

Rule 11(b)(2) of the Federal Rules of Civil Procedure states:

> **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper–whether by signing, filing, submitting, or later advocating it–an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> > **(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law[.]

Fed. R. Civ. P. 11(b)(2). On its own initiative, a court can impose an appropriate sanction on an attorney who violates Rule 11(b). *See* Fed. R. Civ. P. 11(c)(1), (3).

"Rule 11 sanctions are properly assessed (1) when a party files a pleading that has no reasonable factual basis; (2) when the party files a pleading that is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law; or (3) when the party files a pleading in bad faith for an improper purpose." *Burgos v. Option One Mortg. Corp.*, 786 F. App'x 231, 233 (11th Cir. 2019) (cleaned up) (citing *Worldwide Primates, Inc. v. McGreal*, 87 F.3d 1252, 1254 (11th Cir. 1996)); *see also Gulisano v. Burlington, Inc.*, 34 F.4th 935, 942 (11th Cir. 2022).

"The initiating court must [also] employ (1) a 'show-cause' order to provide notice and an opportunity to be heard; and (2) a higher standard ('akin to contempt') than in the case of party-initiated sanctions." *Kaplan*, 331 F.3d at 1255. The Eleventh Circuit has not elaborated on this "akin to contempt" standard and whether this stricter requirement for *sua sponte* Rule 11 necessitates a finding of subjective bad faith. *Deutsche Bank Nat'l Tr. Co. v. Thomason*, No. 2:24-CV-517-ECM, 2025 WL 552669, at *5 (M.D. Ala. Feb. 19, 2025). "However, the Eleventh Circuit has upheld a district court's *sua sponte* imposition of Rule 11 sanctions where an attorney filed a 'factually and legally inaccurate' writ of execution where no judgment had been entered." *Id.* at *7 (citing *iParametrics, LLC v. Howe*, 522 F. App'x 737, 739 (11th Cir. 2013) (upholding district court's sanctioning of attorney under Rule 11 where the lawyer "could readily have discovered and corrected his pleadings, but instead his misrepresentations went undetected for over a year.")).

Sanctions ought to be effective deterrents that prevent repetition of the punished conduct. *See Regions Bank*, 2021 WL 4852268, at *8 (11th Cir. Oct. 19, 2021). These sanctions are exceedingly flexible, and can include attorneys' fees, required educational courses, formal reprimands, apologies to the represented parties, reimbursement of plane tickets, or even community service. *Id.*; *see Johnson*

v. 27th Ave. Caraf, Inc., 9 F.4th 1300, 1315 (11th Cir. 2021); *Rowe v. Gary*, 773 F. App'x 500, 503 (11th Cir. 2019); *Mata*, 678 F. Supp. 3d at 466.

B. The Court's Inherent Powers

"Federal courts possess certain 'inherent powers,' not conferred by rule or statute, to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 107 (2017) (cleaned up) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962)). "To exercise its inherent power to impose sanctions, a court must find that the party acted in bad faith." *Versant*, 2025 WL 1440351 (citing *McDonald v. Cooper Tire & Rubber Co.*, 186 F. App'x. 930, 931 (11th Cir. 2006)). Courts employ a subjective bad-faith standard here. *See Purchasing Power, LLC*, 851 F.3d at 1224. A subjective bad-faith standard can be met if an attorney's conduct is so egregious that it could only be committed in bad faith. *See id.* at 1224–25. While recklessness alone cannot constitute bad faith, a filing that is both reckless and frivolous can constitute bad faith. *Id.* at 1223–25.

"Bad faith exists when the court finds that a fraud has been practiced upon it, or 'that the very temple of justice has been defiled,' or where a party or attorney knowingly or recklessly raises a frivolous argument, delays or disrupts the litigation, or hampers the enforcement of a court order." *Allapattah Servs., Inc. v. Exxon Corp*, 372 F. Supp. 2d 1344, 1373 (S.D. Fla. 2005) (Gold, J.) (citing *Chambers*, 501 U.S. at 46; *Malautea v. Suzuki Motor Co. Ltd.*, 987 F.2d 1536, 1545–46 (11th Cir. 1993)); *see also Quantum Communs. Corp. v. Star Broad., Inc.*, 473 F. Supp. 2d 1249, 1268–69 (S.D. Fla. 2007) (Martinez, J.). When the court uses its inherent powers to punish a party with attorneys' fees, there must be a direct causal link between the condemned conduct and the resulting costs. *Goodyear Tire & Rubber Co.*, 581 U.S. at 108. Sanctions under the Court's inherent powers are compensatory, not punitive. *Id.*

C. The Local Rules of the Southern District of Florida

The Local Rules of the Southern District of Florida incorporate the Rules Regulating the Florida Bar. S.D. Fla. Local R. 6(2)(a); *see Versant Funding LLC*, 2025 WL 1440351, at *2.

The regulations of the Florida Bar provide that

> Every member of The Florida Bar and every lawyer of another state or foreign country who provides or offers to provide any legal services in this state is within the jurisdiction and subject to the disciplinary authority of this court and its agencies under this rule and is charged with notice and held to know the provisions of this rule and the standards of ethical and professional conduct prescribed by this court.

Fla. R. Reg. Fla. Bar 3-4.1.

Additionally, a lawyer should act with reasonable diligence and shall not engage in misrepresentation to a court. Fla. R. Reg. Fla. Bar 4-1.3, 4-3.3, and 4-8.4(c). Rule 4-1.1 specifically addresses artificial intelligence, requiring attorneys:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, including generative artificial intelligence, and comply with all continuing legal education requirements to which the lawyer is subject.

Fla. R. Reg. Fla. Bar 4-1.1, Comment, Maintaining Competence (emphasis added) (amended Aug. 29, 2024, effective Oct. 28, 2024).

Sanctions pursuant to Local Rule 6(b)(2)(B) can include "(1) disbarment, (2) suspension, (3) reprimand, (4) monetary sanctions, (5) removal from this Court's roster of attorneys eligible for practice before this Court, or (6) any other sanction the Court may deem appropriate." S.D. Fla. L.R. 6(b)(2)(B).

D. 28 U.S.C. § 1927

"[U]nder 28 U.S.C. § 1927, attorneys can face sanctions for engaging in practices that unnecessarily delay or increase the complexity of the litigation." *Versant Funding LLC*, 2025 WL 1440351, at *3. Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927. To justify a grant of attorney's fees under 28 U.S.C. § 1927, the Court must find that "(1) the attorney engaged in unreasonable and vexatious conduct; (2) such conduct multiplied the proceedings; and (3) the amount of the award does not exceed the costs, expenses, and attorney's fees reasonably incurred due to such conduct." *Versant Funding LLC*, 2025 WL 1440351, at *3 (citing *Goode v. Wild Wing Cafe*, 588 F. App'x 870, 874 (11th Cir. 2014)).

DISCUSSION

Based on the facts set forth above, sanctions are warranted for Paul's behavior. This Court analyzes the four sources of the sanctions ordered here, in turn.

I. Rule 11

"The purpose of Rule 11 sanctions is to reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuvers." *Kaplan*, 331 F.3d at 1255 (cleaned up). The rule incorporates an objective standard, and courts determine whether a reasonable attorney in like circumstances could believe his actions were factually and legally justified. *See id.* Even though the imposition of Rule 11 sanctions does not strictly require a finding of bad faith, *Purchasing Power*, 851 F.3d at 1223 n.4, this Court finds under an objective standard that Paul's conduct constitutes bad faith and that he filed numerous motions and responses for an improper purpose, thus warranting sanctions.

"The filing of papers without taking the necessary care in their preparation is an abuse of the judicial system that is subject to Rule 11 sanction." *Mata*, 678 F. Supp. 3d at 460 (cleaned up) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990)). "Rule 11 explicitly and unambiguously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed." *Id.* (cleaned up). The Honorable Xavier Rodriguez in the Western

District of Texas puts the matter plainly: "Attorneys using AI tools without checking on the accuracy of their output are responsible for the consequences of incorporating inaccurate information into their work product." Artificial Intelligence (AI) and the Practice of Law, 24 Sedona Conf. J. 783, 784 (2023).

This Court finds that attorney Paul engaged in bad faith conduct, and thus is deserving of sanctions under Rule 11, for two main reasons. First, despite being on notice that his use of AI resulted in hallucinated cases and quotations, Paul continued to make submissions to the Court using AI without checking the veracity of cases and citations submitted to the Court and his adversaries. Second, Paul admitted that he relied solely upon a paralegal—a non-lawyer—to draft filings to the Court and did not adequately review the paralegal's work before filing.

Paul was on notice that his use of AI resulted in hallucinated cases and quotations on April 25, 2025, and yet he submitted seven filings to this Court and other courts after this date that contained hallucinated cases and fabricated quotations, including in a response to an order to show cause regarding his use of AI to generate hallucinated cases and quotations. Even if Paul's initial use of AI was reasonable (and there is no basis to conclude that it was), his subsequent use of AI to generate hallucinated cases was intentional, constituting an improper purpose. *See O'Brien v. Flick*, No. 24-61529-CIV, 2025 WL 242924, at *6 (S.D. Fla. Jan. 10, 2025) (Damian, J.) (noting that filing a memorandum of law based in part on non-existent law is an improper purpose). Paul was aware that his use of AI was generating hallucinated quotations and decided to submit those filings to the Court regardless.

Additionally, Paul was not candid to the Court when confronted about his use of AI, stating that some of these documents were "prepared under time constraints," when he had nearly two more weeks before the deadline to submit his responses. [First Federal Case, ECF No. 36 at 2]. From an objective standard, Paul intentionally submitted AI-generated cases and quotations to the Court all while knowing that his use of AI produced hallucinated cases and quotations. Such actions are clearly

sanctionable. *See iParametrics*, 522 F. App'x at 739 ("When an attorney signs and presents pleadings to the district court, he certifies that he has conducted a reasonable inquiry, his claims are warranted by existing law, and his factual contentions have evidentiary support.") (cleaned up); *Mata*, 678 F. Supp. 3d at 464 (concluding that counsel violated Rule 11 by not reading a single case in his filing and "taking no other steps on his own to check whether any aspect of the assertions of law were warranted by existing law. . . . [S]igning and filing that affirmation after making no 'inquiry' was an act of subjective bad faith."); *see also Versant Funding Ltd. Liab. Co.*, 2025 WL 1440351, at *3–4.

Paul also stated that he relied on a paralegal—a non-lawyer—to draft submissions to the Court and failed to review the paralegal's work before Paul filed these documents, despite knowing that the paralegal's use of AI was leading to hallucinated cases and quotations. "The drafting, preparing, or filing pleadings on behalf of another constitutes the practice of law and may not be engaged in by a nonlawyer." *Sanz v. Fernandez*, 633 F. Supp. 2d 1356, 1363 (S.D. Fla. 2009) (Cohn, J.) (citing *Fla. Bar v. We the People Forms & Serv. Ctr. of Sarasota, Inc.*, 883 So.2d 1280 (Fla. 2004)); *see Household Life Ins. Co. v. Lincoln*, No. 10-81174-CIV, 2011 WL 204614, at *2 (S.D. Fla. Jan. 20, 2011) ("Only a licensed lawyer may represent another person in court.") (citing *Guajardo v. Luna*, 432 F.2d 1324, 1324 (5th Cir. 1970)). The Eleventh Circuit does not "lightly regard the duty of an attorney to prepare a case properly and to give the issues full consideration before preparing pleadings." *Reese v. Herbert*, 527 F.3d 1253, 1264 (11th Cir. 2008) (cleaned up). By relying exclusively on his paralegal to perform his core duties as an attorney, Paul abandoned his responsibilities as a member of the Florida Bar.

Simply put, Paul did not act as a reasonable attorney—not even close. A reasonable attorney does not blindly rely on AI to generate filings. A reasonable attorney, when made aware that his practices were leading to hallucinated cases and quotations, immediately changes course. A reasonable attorney does not rely on a paralegal to draft a filing. The conclusion that Paul failed to act as a reasonable attorney is unfortunate, but undeniable. Paul acted in bad faith for an improper purpose.

Further, all the sanctions ordered in this case would deter improper attorney conduct. While the use of AI by itself is not inherently suspect, wholesale reliance on AI without further inquiry or diligence by a lawyer is conduct which a court should deter, as lawyers must always conduct a reasonable inquiry. Strong sanctions against the undiligent, unverified use of AI will deter lawyers from blindly relying on AI and on paralegals for drafting submissions to the Court.

II. The Court's Inherent Powers

For a court to sanction a party under its inherent powers, the court must find that the attorney acted in "subjective bad faith." *Purchasing Power*, 851 F.3d at 1224. "[T]his standard can be met if an attorney's conduct is so egregious that it could only be committed in bad faith." *Id.* at 1224–25 (citing *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980)); *see Harris v. Warden*, 498 F. App'x 962, 964 (11th Cir. 2012). "The Supreme Court has held that sanctions such as dismissal are within a court's inherent power when a party's conduct evidences bad faith and an attempt to perpetrate a fraud on the court." *O'Brien*, 2025 WL 242924, at *6 (cleaned up) (citing *Chambers*, 501 U.S. at 40–46).

Paul's use of hallucinated cases and quotations after he was on notice, and, importantly, his use of hallucinated cases and quotations *in response to (1) a motion to dismiss regarding his misrepresentations to the Court and (2) an order to show cause regarding hallucinated cases and quotations*, is so egregious that this Court finds that they were done in bad faith. To paraphrase the Supreme Court: this conduct defiles the temple of justice and brings disrepute to the practice of law. *See Chambers*, 501 U.S. at 46. Submitting hallucinated cases and quotations regarding whether his case should be dismissed and whether he should be sanctioned for his use of hallucinated quotations is crystal-clear evidence that Paul attempted to perpetrate a fraud on the Court and his adversaries.

Further, Paul's "bad faith citation of non-existent authorities . . . serve[s] only to foster extensive and needless satellite litigation"—the current controversy over his use of AI in four separate cases before this Court. *O'Brien*, 2025 WL 242924, at *6 (quoting *Chambers*, 501 U.S. at 51). For these

reasons, the Court finds specially that the sanction of dismissal is warranted under the Court's inherent powers. The Court believes that dismissal is particularly appropriate in this case because, as Paul admitted, he used AI in generating various *Complaints*, which contain allegations that a District Court must (as a matter of law) take as true for purposes of evaluating a motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure. The Court is extremely concerned that underlying factual allegations may have been hallucinated or unverified as well, especially considering that Paul used AI in drafting the Complaints and could not assure the Court unequivocally at the hearing that they contain no fabricated allegations. [*See* H'g Tr. at 13:1-8; 14:22–15:21]. Neither the Defendants nor the Court should be made to analyze and respond to factual allegations in Complaints that may have been wholly made up by generative AI—when the attorney's signature has been affixed to representations that are fake and worthless across so many filings (purporting to indicate the factual contentions have or will have evidentiary support).

III. Local Rules

Paul did not act with reasonable diligence and engaged in obvious misrepresentation to the Court, thereby violating Florida Bar Regulation 4-1.1. The regulations of the Florida bar state clearly that a lawyer must keep abreast of changes in the law and its practice, "including an understanding of the benefits and risks associated with the use of technology, including generative artificial intelligence." Fla. R. Reg. Fla. Bar 4-1.1, Comment, Maintaining Competence. Beyond doubt, Paul did not understand the benefits and risks associated with generative AI, and this led to repeated bad-faith misrepresentations to the Court. Thus, the Court is justified in sanctioning Paul under Southern District of Florida Local Rule 6(b)(2)(B). The monetary sanctions, referral to the Florida Bar, and required notification to other courts and litigants of this Order are all authorized by Paul's violations of our Local Rules.

IV. 28 U.S.C. § 1927

The parties to these various cases and multiple judges of this Court have had to waste many hours responding to Paul's actions. By repeatedly using AI to generate hallucinated cases and quotations, the parties and the Court have had to go through filings in all eight related cases to determine whether his citations were real or not, rather than focusing on the substance of his claims. The parties and the Court have spent significant resources on orders to show cause and attending and preparing for the June 17 hearing, which necessitated further briefing as additional facts came to light regarding Paul's misrepresentations. Thus, it is undeniable that Paul's actions "unnecessarily delay[ed] or increase[d] the complexity of the litigation." *Versant Funding LLC*, 2025 WL 1440351, at *3. This Court accordingly finds that Paul engaged in unreasonable and vexatious conduct, which multiplied the proceedings. *See id.* (citing *Goode*, 588 F. App'x at 874). Sanctions, including the awarding of costs, expenses, and attorneys' fees incurred because of Paul's use of AI-generated hallucinated cases and fabricated quotations, are therefore warranted.

* * *

We live in an age when two things are happening simultaneously: (1) institutions central to our constitutional republic are suffering from a loss of trust and confidence; and (2) technology has developed to a point that few could scarcely imagine even twenty years ago. At all times, attorneys must ensure that their conduct, including their use of technology, never contributes to any diminishment of trust and confidence held by the public for the practice of law and judicial proceedings. Here, Attorney Paul fell far below the standard expected, and because he did so, numerous parties and court personnel expended substantial resources getting to the bottom of his AI-fueled hallucinations. Perhaps twenty years from now, AI will be flawless. Whenever that day comes, that flawless brief will only have meaning because the signature at the bottom does.

CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Pursuant to Rule 11 of the Federal Rules of Civil Procedure and this Court's inherent authority, the four cases before this Court (CASE NO. 0:25-cv-60630; CASE NO. 0:25-cv-60646; CASE NO. 0:25-cv-60647; and CASE NO. 0:25-cv-60712) are **DISMISSED without prejudice and without leave to amend.** Any pending motions in these four cases are **DENIED as moot.** All pending deadlines are **TERMINATED.** The Clerk of Court is directed to **CLOSE** these four cases. *See Johnson*, 9 F.4th at 1316 (upholding district court's order dismissing claims pursuant to Rule 11 and the court's inherent authority).
2. If the Plaintiffs choose to refile any of these cases, the Clerk of Court is directed to assign the cases, and any other cases arising from or related to them, to the undersigned.
3. Pursuant to Rule 11, this Court's inherent authority, the Southern District of Florida's Local Rules, and 28 U.S.C. § 1927, Attorney James Martin Paul is **ORDERED** to pay the attorneys' fees for Defendants' counsel in these four cases for all time spent responding to any filing in which generative AI was used to develop hallucinated cases and fabricated quotations.[8] The parties in the above-captioned cases shall promptly confer and attempt in good faith to determine and agree upon the reasonable attorneys' fees and costs that were incurred by Defendants' counsel in this regard. The parties shall then file Joint Notices **no later than July 24, 2025,** stating whether they have been able to agree upon the fees and costs to be paid, and if so, the specific amount agreed upon, and the payment schedule. The Court will then issue

[8] After a review of the Defendants' submissions of their attorneys' fees, the Court is skeptical that Defendants are entitled to all the fees claimed for each of these four cases. Some time spent by Defendants responding to the Plaintiffs' submissions would have been incurred in these matters whether or not Paul engaged in misrepresentations. Further, some research into Paul's actions could have been conducted by a paralegal or an associate, rather than a partner.

any further Order as deemed necessary. If the parties and their counsel cannot agree on a reasonable amount of fees and costs or a payment schedule, they shall file separate notices on or before **July 25, 2025**, stating the nature of the dispute over the fees and costs (whether it involves the time incurred, hourly rate, or other issues) and their respective positions. The Court will promptly determine the amount of the attorney's fees and costs to be paid to Defendants by Attorney James Martin Paul and issue any appropriate further orders.[9] *See Goodyear Tire & Rubber Co.*, 581 U.S. at 108 (noting courts' "inherent sanctioning authority" to grant an award of attorneys' fees); *Johnson*, 9 F.4th at 1316.

4. If Attorney James Martin Paul files any case in the Southern District of Florida within the next two years of the date of this Order, he must attach a copy of this Order to his Complaint. *See Johnson*, 9 F.4th at 1317 (finding no abuse of discretion where a district court ordered an attorney to include a copy of a sanctions order in any future complaint the attorney filed).

5. Attorney James Martin Paul is **HEREBY REFERRED** to the Florida Bar for appropriate discipline.

DONE AND ORDERED in the Southern District of Florida on July 15, 2025.

DAVID S. LEIBOWITZ
UNITED STATES DISTRICT JUDGE

cc: counsel of record

[9] At the Order to Show Cause hearing, Paul represented that he would refund his clients' fees as to the time spent "moving forward on these . . . cases." [H'g Tr. at 16:23–17:2]. Because of this representation, the Court does not order him to refund his clients.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Nina Y. Wang

Civil Action No. 22-cv-01129-NYW-SBP

ERIC COOMER,

Plaintiff,

v.

MICHAEL J. LINDELL,
FRANKSPEECH LLC, and
MY PILLOW, INC.,

Defendants.

ORDER

This matter is before the Court on the Court's Order to Show Cause, [Doc. 309], and Defendants' Response to Show Cause Order and Motion for Leave to Correct Filing ("Response"), [Doc. 311].[1] Pursuant to subsequent orders, [Doc. 313; Doc. 338], Defendants have submitted additional materials for the Court's consideration and certified that the record is complete, [Doc. 323; Doc. 339]. For the reasons set forth herein, the Order to Show Cause [Doc. 309] is **MADE ABSOLUTE**.

BACKGROUND

In preparation for trial in this matter, the Court issued a Trial Preparation Order that set certain deadlines, including for the filing of motions in limine. [Doc. 265 at 6]. The

[1] Where the Court refers to the filings made in Electronic Court Filing ("ECF") system in this action, it uses the convention [Doc. ____] and uses the page number as assigned by the ECF system, except when citing from the transcript of a proceeding. When citing the transcript of a proceeding, the Court uses the ECF docket number, but cites to the page and line numbers as assigned in the original transcript. Additionally, where the Court refers to filings in other actions, it uses the convention [ECF No. ____].

Trial Preparation Order further informed the Parties that any pending motions in limine would be discussed at the Final Pretrial/Trial Preparation Conference. [*Id.* at 1–2]. Plaintiff Eric D. Coomer ("Plaintiff" or "Dr. Coomer") filed a Motion in Limine on February 10, 2025. [Doc. 265]. Defendants Michael J. Lindell, Frank Speech LLC, and MyPillow, Inc. (collectively, "Defendants") filed a Brief in Response to the Motion in Limine ("Opposition") on February 25, 2025. [Doc. 283]. Dr. Coomer filed a Reply in Support of Motion in Limine ("Reply") on March 7, 2025. [Doc. 288]. Defendants' Opposition contained the "nearly thirty defective citations" that led to the Order to Show Cause. [Doc. 309 at 2–3].

Christopher Kachouroff ("Mr. Kachouroff") of the law firm of McSweeney Cynkar & Kachouroff PLLC appeared at the Final Pretrial/Trial Preparation Conference as lead counsel for Defendants.[2] After counsel for Dr. Coomer argued on his behalf with respect to the Motion in Limine, the Court provided Mr. Kachouroff an opportunity to respond on behalf of Defendants. *See* [Doc. 315 at 69:19–22]. Although Mr. Kachouroff equivocated about whether he was prepared to argue the Motion in Limine, [*id.* at 71:19–72:9], he substantively argued the issues, [*id.* at 69:21–80:11, 85:1–90:15]. Only after Mr. Kachouroff concluded his argument and inquired whether "there [was] anything else the Court would like me to address," did the Court raise several questions regarding the Opposition. *See* [*id.* at 90:15–19]. The discussed errors included but were not limited to:

> [M]isquotes of cited cases; misrepresentations of principles of law associated with cited cases, including discussions of legal principles that simply do not appear within such decisions; misstatements regarding whether case law originated from a binding authority such as the United States Court of Appeals for the Tenth Circuit; misattributions of case law to

[2] As noted in the Order to Show Cause, Ms. DeMaster also signed the Opposition. [Doc. 309 at 1–2; Doc. 283 at 15].

this District; and most egregiously, citation of cases that do not exist.

[Doc. 309 at 3]. The Court omitted at least two errors from its discussion at the Final Pretrial/Trial Preparation Conference. First, the Court did not address a misquotation from *World Wide Ass'n of Specialty Programs v. Pure, Inc.*, 450 F.3d 1132, 1138 (10th Cir. 2006) ("*Pure* Misquote"). [Doc. 283 at 2]. The Opposition uses the parenthetical "(recognizing that 'reputation and character are inextricably intertwined' in defamation cases)," but the quotation "reputation and character are inextricably intertwined" does not appear in *Pure*. Second, the Court did not alert Defendants to an inaccurate citation to *United States v. Reaves*, 649 F.3d 862, 867–68 (8th Cir. 2011) ("*Reaves* Erroneous Citation"). *See* [Doc. 283 at 12]. *Reaves* does not support the proposition that "[c]ourts recognize that evidence often serves multiple purposes and implicates multiple evidentiary rules." *Compare* [*id.*], *with Reaves*, 649 F.3d at 867–68.

As for the errors the Court did discuss at the Final Pretrial/Trial Preparation Conference, Mr. Kachouroff was unable to respond in a manner that was satisfactory to the Court. [Doc. 315 at 90:15–112:22]. Specifically, Mr. Kachouroff indicated that he had delegated citation checking for the Opposition to his co-counsel, Jennifer DeMaster ("Ms. DeMaster"). [*Id.* at 94:16–17]. Mr. Kachouroff agreed that both he and Ms. DeMaster had signed and certified the Opposition for purpose of Rule 11 of the Federal Rules of Civil Procedure. [*Id.* at 90:19–22].[3] In addition, the Court had the following colloquy with

[3] The Opposition also identified Douglas G. Wardlow and Jeremiah D. Pilon. [Doc. 283 at 15–16]. As the Court noted in the Order to Show Cause, these individuals appear to be in-house counsel for Defendant My Pillow, Inc., but neither have entered an appearance in this case. [Doc. 309 at 2 n.1]. Mr. Pilon does not appear to be a member of the Bar of the United States District Court for the District of Colorado. Mr. Wardlow has since withdrawn from this case. [Doc. 318; Doc. 324].

Mr. Kachouroff:

> THE COURT: Was this motion generated by generative artificial intelligence?
>
> MR. KACHOUROFF: Not initially. Initially, I did an outline for myself, and I drafted a motion, and then we ran it through AI. And I --
>
> THE COURT: And did you double-check any of these citations once it was run through artificial intelligence?
>
> MR. KACHOUROFF: Your Honor, I personally did not check it. I am responsible for it not being checked.
>
> THE COURT: And you understood, as an officer of the court, pursuant to Rule 11 --
>
> MR. KACHOUROFF: I did, Your Honor.
>
> THE COURT: -- if you're going to use generative artificial intelligence that that did not excuse you from the obligations of Rule 11?
>
> MR. KACHOUROFF: Absolutely not. Absolutely not.
>
> THE COURT: You understood that, correct?
>
> MR. KACHOUROFF: Yes, I did, Your Honor.
>
> THE COURT: And that doesn't seem to have happened here, does it?
>
> MR. KACHOUROFF: No, Your Honor.

[Doc. 315 at 111:1–21]. At no time did Mr. Kachouroff indicate that he did not understand what "generative artificial intelligence" referred to or ask for clarification. [*Id.*].

Based on the deficiencies in the Opposition and the lack of explanation during the Final Pretrial/Trial Preparation Conference, the Court ordered Mr. Kachouroff and Ms. DeMaster to show cause why they should not be sanctioned and referred to their respective state bars for disciplinary proceedings. [Doc. 309 at 5–6]. On April 25, 2025, Mr. Kachouroff and Ms. DeMaster submitted their Response to the Order to Show Cause,

accompanied, inter alia, by a declaration from each of them. [Doc. 311; Doc. 311-5; Doc. 311-6].

In that Response, Defendants represented that counsel "was unaware of any errors or issues with his response filed 55 days earlier, and had no reasonable opportunity to investigate any problem to be able to engage in constructive discussion about Doc. No. 283." [Doc. 311 at 1]. Defendants further asserted that "[a]fter the hearing and having a subsequent opportunity to investigate Doc. 283, it was immediately clear that the document filed was not the correct version. It was a prior draft. It was inadvertent, an erroneous filing that was not done intentionally, and was filed mistakenly through human error. Counsel acted swiftly to rectify the error." [Doc. 311 at 2]. Defendants submitted additional materials for the Court's consideration and certified that the record is complete with respect to the Order to Show Cause. [Doc. 339].

For the following reasons, the Court respectfully **CONCLUDES** that sanctions are warranted against Mr. Kachouroff and the law firm of McSweeney Cynkar & Kachouroff PLLC, jointly and severally, and against Ms. DeMaster individually.

ANALYSIS

I. Rule 11 of the Federal Rules of Civil Procedure

"By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(2).

Courts across the country—both within the United States Court of Appeals for the Tenth Circuit ("Tenth Circuit") and outside of it—recognize that Rule 11 applies to the use of artificial intelligence. *See, e.g.*, *Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 495 (D. Wyo. 2025) ("At [Rule 11's] core, an attorney who signs a legal document certifies that they have 'read the document, [have] conducted a reasonable inquiry into the facts and the law and are satisfied that the document is well grounded in both, and is acting without any improper motive.'" (quoting *Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 542, (1991))); *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023) ("The Court has described Respondents' submission of fake cases as an unprecedented circumstance. A fake opinion is not 'existing law' and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law." (citation omitted)); *Ferris v. Amazon.com Servs., LLC*, No. 3:24-cv-00304-MPM-JMV, 2025 WL 1122235, at *2 (N.D. Miss. Apr. 16, 2025) (applying Rule 11 to the plaintiff's submissions of false citations through his complaint and subsequent filings). Rule 11 expressly provides that "[i]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). "Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." *Id.*

II. Record Before the Court

Despite Mr. Kachouroff's concessions during the Final Pretrial/Trial Preparation Conference, [Doc. 315 at 111:22–112:22], both the Response to the Order to Show

Cause and Mr. Kachouroff's Declaration take on a puzzlingly defiant tone and tenor, [Doc. 311; Doc. 311-6]. The Response suggests that the Court improperly and unreasonably expected counsel to be prepared to address the substance of the Opposition to the Motion in Limine, including the legal authority upon which Defendants' arguments were based, after he acknowledged that he was lead counsel and signed the pleading and after the Trial Preparation Order expressly indicated that such issues would be "discussed."[4] [Doc. 311 at 1–2; Doc. 311-6 at ¶ 5 ("I must respectfully submit that it was unfair for the Court to continue to rapidly examine me with detailed questions about this document in this posture, when I was clearly confused by the document that was before the Court.")].

Mr. Kachouroff's attempt to shift responsibility for counsel's failure to properly review and file Defendants' Opposition is both troubling and not well-taken. Contrary to counsel's contention, Rule 11 does not require the Court to provide advance notice or a safe harbor before issuing an order to show cause why conduct specifically described in the order has not violated Rule 11(b). Fed. R. Civ. P. 11(c)(3). Instead, counsel has an affirmative duty—without any prompting from the Court—to comply with Rule 11 and all other Federal Rules of Civil Procedure. Indeed, the Supreme Court has held that the

[4] [Doc. 265 at 1–2]. The Court is unpersuaded by Mr. Kachouroff's attempt to distinguish the terms "discussed" and "formally argued" from each other. [Doc. 311-6 at ¶ 11]. Either term reflects the expectation that counsel be prepared to address substantively any outstanding disputes regarding the admissibility of evidence raised by the Motion in Limine and Response at the Final Pretrial/Trial Preparation Conference. To the extent that Mr. Kachouroff was unclear about his obligations based on the Court's language, Rule 16 of the Federal Rules of Civil Procedure provides express guidance, in pertinent parts: "[a]t any pretrial conference, the court may consider and take appropriate action on the following matters . . . obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence, as well as "disposing of any pending motions." Fed. R. Civ. P. 16(c)(2)(C), (K) (emphasis added).

filing of papers "without taking the necessary care in their preparation is a separate abuse of the judicial system, subject to separate sanction." *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 398 (1990). And despite Mr. Kachouroff's suggestion, the Court did not blindside Defendants with a public, written Order to Show Cause. Rather, the Court offered Mr. Kachouroff the opportunity to explain the errors in the Opposition before the Court issued a written order. In any case, the Court has given defense counsel an opportunity to show cause, and it now turns to the substance of their Response.

A. Submission of a Draft

Defense counsel submits that Exhibit A to their Response is the "correct response" to Plaintiff's Motion in Limine, which is submitted "*without alteration and does not include a completed certificate of service.*" [Doc. 311 at 2 (citing [Doc. 311-1])]. They further contend that "[t]he mistaken filing occurred under circumstances which were entirely inadvertent. For example, the day prior to the filing of the wrong version, defense counsel worked together to remove troublesome citations and shore up the main argument." [*Id.* at 3 (citing Doc. 311-3)]. Mr. Kachouroff declares under penalty of perjury that:

> "[b]etween February 22 and March 1, 2025, I was on a long overdue one-week vacation in Mexico with my family. Nevertheless, during that time, Mrs. DeMaster and I completed final revisions on our Opposition, going through each page to check both the argument and verify the case citations. Because of the limitations on internet service where I was located, as we confirmed deletions and edits, Mrs. DeMaster simultaneously completed a citation check using her Westlaw account. Mrs. DeMaster also sent me a Westlaw citation report that allowed me to compare the citations in the Westlaw report with those in our Opposition. Correspondence confirming our work together and her Westlaw citation report is attached as Exhibit C to our Motion for Leave (Email dated February 24, 2025). These emails are true and correct copies of communication between myself and Mrs. DeMaster. I printed the drafts out and closely reviewed the final version that was to be filed.

[Doc. 311-6 at ¶ 8 (emphasis added)]. Ms. DeMaster declares, under penalty of perjury,

that the correct version that should have been filed was titled "2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy." [Doc. 311-5 at 4 at ¶ 14]. Ms. DeMaster further declares "I have included two true and accurate screen shots of the document properties for the two versions as Exhibit D to Defendants' Motion for Leave that show the time edits to both versions of the documents. . . . As can be seen, the last edit was done to the incorrect version and it was edited for six minutes. The purpose of that very brief edit was to ensure the certificate of service date was filled out and Court caption was changed to Colorado." [*Id.* at ¶ 16].

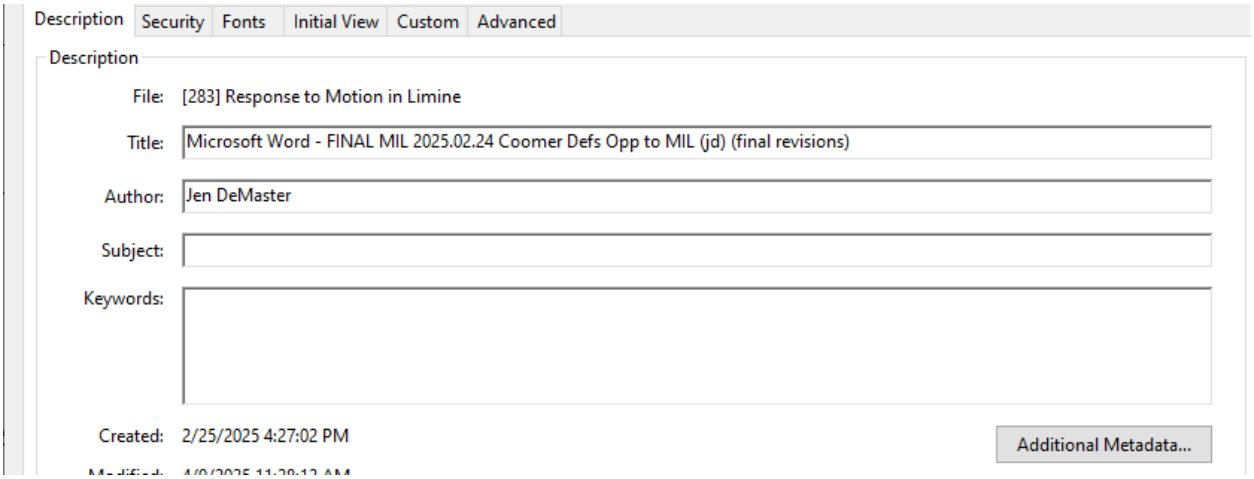
In sum, defense counsel contend that they mistakenly filed "FINAL MIL 2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions)"—which contains the erroneous citations—instead of the corrected "2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy." To evaluate counsel's representations, this Court attempts to square counsel's representations with the documentary record before it.

1. Filed Version

The data from the District's CM/ECF system related to the filed version of the Opposition, [Doc. 283], indicates that a pdf version entitled "2025.02.25 Coomer_Opp MIL.pdf" was filed on February 25, 2025, derived from a Microsoft Word document entitled "FINAL MIL 2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions)."

Verified Signature(s)

Document No: 10129634
Document description: Main Document
Original filename:C:\fakepath\2025.02.25 Coomer_Opp MIL.pdf
Electronic document Stamp:
[STAMP dcecfStamp_ID=1071006659 [Date=2/25/2025] [FileNumber=10129634-0] [5cdcd47e56c99e97e11a3039f6e8daabf994c397dc2bde985031b6a2c2363b7f5ae8727f60025614f3b2989099aa20182a1f583517682801ac6260bf862a6a90]]

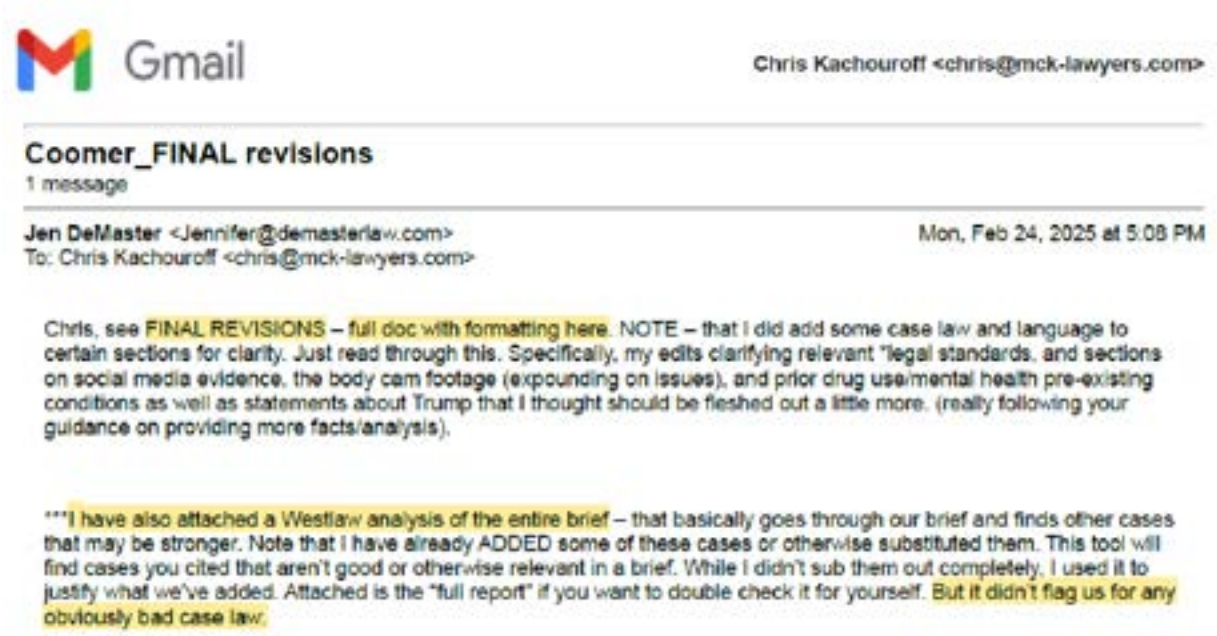


The filed version refers to Plaintiff as "Mr. Coomer." *See, e.g.*, [Doc. 283 at 1]. The filed version also reflects the "District of Colorado" in the case caption. [*Id.*].

2. Preparation of the Filed Version: 2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions).docx

The day before the filing, February 24, Ms. DeMaster sent Mr. Kachouroff an email with the time stamp of 5:08 p.m., attaching "2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions).docx," with a file size of 53K, and a Westlaw Report. [Doc. 311-3 at 2; Doc. 389-1].[5] Given the naming convention, this version is most likely the base document of the filed Opposition. The message from Ms. DeMaster to Mr. Kachouroff reads:

[5] Pursuant to the Court's Order to Show Cause, defense counsel submitted electronic versions of all drafts of the Response for the Court's inspection. [Doc. 309].



Gmail Chris Kachouroff <chris@mck-lawyers.com>

Coomer_FINAL revisions
1 message

Jen DeMaster <Jennifer@demasterlaw.com> Mon, Feb 24, 2025 at 5:08 PM
To: Chris Kachouroff <chris@mck-lawyers.com>

Chris, see FINAL REVISIONS – full doc with formatting here. NOTE – that I did add some case law and language to certain sections for clarity. Just read through this. Specifically, my edits clarifying relevant "legal standards, and sections on social media evidence, the body cam footage (expounding on issues), and prior drug use/mental health pre-existing conditions as well as statements about Trump that I thought should be fleshed out a little more. (really following your guidance on providing more facts/analysis).

***I have also attached a Westlaw analysis of the entire brief – that basically goes through our brief and finds other cases that may be stronger. Note that I have already ADDED some of these cases or otherwise substituted them. This tool will find cases you cited that aren't good or otherwise relevant in a brief. While I didn't sub them out completely, I used it to justify what we've added. Attached is the "full report" if you want to double check it for yourself. But it didn't flag us for any obviously bad case law.

[Doc. 311-3 at 2 (emphasis added)]. As discussed above, Mr. Kachouroff refers to the attached document, i.e, "2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions).docx," attached to the 5:08 p.m. email, as the "final version" that he compared against the Westlaw Report, printed out, and reviewed. [Doc. 311-6 at ¶ 8]. Ms. DeMaster's declaration similarly states that this "final" version, as sent to Mr. Kachouroff, reflects the edits and citation checks that she and Mr. Kachouroff made over the phone. *See* [Doc. 311-5 at ¶¶ 6–8]. But the "final" version of the Opposition is substantially the same as the one filed. *Compare* [Doc. 389-1], *with* [Doc. 283]. It again refers to Plaintiff as Mr. Coomer. *See e.g.* [Doc. 389-1 at 1]. It reflects the District of Colorado in the caption. [*Id*].

This "final" version of the Opposition that Mr. Kachouroff reviewed does not, however, reflect any edits that now appear in the "correct" version, *compare* [*id.*], *with* [Doc. 311-2], and it is replete with the same errors as the filed version. For instance, "2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions).docx," still misattributes the

case of *Ginter v. Nw. Mut. Life Ins. Co.*, 576 F. Supp. 627, 630 (D. Ky. 1984) ("*Ginter*") to the District of Colorado. *Compare* [Doc. 389-1 at 4] *with* [Doc. 283 at 4]. It includes the two errors that the Court did not bring to Defendants' attention during the Final Pretrial/Trial Preparation Conference: the *Pure* Misquote and the *Reaves* Erroneous Citation. [Doc. 283 at 3, 12]. It also contains three citations to non-existent cases that were contained in the filed version: *Perkins v. Fed. Fruit & Produce Co*., 945 F.3d 1242, 1251 (10th Cir. 2019) ("*Perkins*"), *Estate of Martinelli v. City & Cnty. of Denver*, No. 19-cv-02737, 2021 WL 4133804, at *6–7 (D. Colo. Sept. 10, 2021) ("*Martinelli*"), and *United States v. Hoffman*, 806 F.3d 1288, 1295 (10th Cir. 2015) ("*Hoffmann*"). *Compare* [Doc. 389-1 at 6, 10, 12] *with* [Doc. 283 at 6, 10, 12]. Put simply, neither defense counsel's communications nor the "final" version of the Opposition that they reviewed corroborate the existence of the "correct" version.

The overlapping errors between the "final" version of the Opposition, [Doc. ___-2], and the filed version, [Doc. 283], also undercut several of defense counsel's representations. For one, the citations to *Perkins, Martinelli*, and *Hoffman* contradict Mr. Kachouroff's statement that "I do not rely on AI to do legal research or find cases." [Doc. 311-6 at ¶ 6]. Mr. Kachouroff further states "I did not understand what was going on *because my co-counsel and I had not relied on AI legal research and had prepared a thoroughly cite-checked final document to be filed as our Opposition.*" [*Id.* at 13]. But this statement does not square with Ms. DeMaster's declaration that:

> During multiple, lengthy phone calls, we discussed the problems of the case citations which had been added to the drafts. [Mr. Kachouroff] told me that he had been focused on the logic of the arguments and believed some of these citations were likely from AI drafts and he wanted them deleted. Both of us were concerned about their reliability. I told him I would check the citations and use Westlaw to validate authority. See Exhibit C –

> 2025.02.24 Emails from DeMaster to Kachouroff. We also discussed the viability of certain arguments.

[Doc. 311-5 at ¶ 6 (emphasis added)]. Although eliminated from the proffered "correct" Opposition, *see* [Doc. 311-1], neither Mr. Kachouroff nor Ms. DeMaster provide the Court any explanation as to how those citations appeared in any draft of the Opposition absent the use of generative artificial intelligence or gross carelessness by counsel.

Given this e-mail and its attachments, it is not clear to the Court how Mr. Kachouroff could be "shocked" by the Court's inquiry or "unfamiliar" with the 17-page filed Opposition, [Doc. 311-6 at ¶ 13], when this "final" version is substantially the same as the filed Opposition, was indisputably sent to Mr. Kachouroff (and presumably reviewed in detail), and was the last documented version of the Opposition exchanged between counsel.[6] Even if Mr. Kachouroff relied on Ms. DeMaster to finish editing and filing the document, [*id.* at ¶ 27], blind reliance on another attorney can be an improper delegation of an attorney's nondelegable responsibility under Rule 11. *See Wadsworth*, 348 F.R.D. at 495–96. The record contains no contemporaneous written communication reflecting any edits made after this February 24, 2025 communication at 5:08 p.m. prior to filing the Opposition on February 25, 2025.

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[6] A prior version of the Opposition exchanged between Mr. Kachouroff and Ms. DeMaster entitled "2025.02.24 Coomer Defs Opp to MIL(jd).docx," with a file size of 49K is attached to their February 24, 2025 correspondence with the time stamp of 2:42 p.m. [Doc. 311-3 at 1]. Although Ms. DeMaster's message refers to finding and replacing "a few cases that were not accurate or properly cited," [Doc. 311-3 at 1], this document includes most of the same exemplar errors discussed above, *see* [Doc. 389-2 at 4 (incorrect citation of *Ginter*), 5 (citation to non-existent *Perkins* case) 10, 12 (citation to non-existent *Martinelli* case). Like the filed version, this version of the Opposition also refers to Plaintiff as Mr. Coomer and correctly identifies the District of Colorado in its caption. *See, e.g.*, [Doc. 389-2 at 1]. But it does not reflect any of the extensive edits that were ultimately contained in the "correct" version, i.e., 2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy. *Compare* [*id.*], *with* [Doc. 311-2].

3. "Correct" Version, i.e. 2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy

Counsel represent that they had developed the "correct" version of their Response, "2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy," [Doc. 311-1], by February 25, 2025 and intended to file it that day, [Doc. 311-5 at ¶ 9]. Curiously, the Appendix included with the blackline draft of the "correct" brief refers to "**Notes of changes from final rough draft to final version that was worked on April 24 and completed on April 25 and finalized at approximately 4:10 PM CST.**" [Doc. 311-2 (bold in original, underline added)]. April 24–25, 2025 refers to the time period between the Court's issuance of the Order to Show Cause on April 23, 2025 and the filing of Defendants' Response—not the time period during editing and before filing Defendants' Opposition.[7] *See* [Doc. 309; Doc. 311].

But there is no evidence in the record of any version with any similar naming convention to "2025.02.24 Coomer Defs Opp to MIL2 (jd)" which would presumably have been the base document before a "copy" was made. And importantly, there is no evidence that any document using a naming convention consistent the "correct" version or containing the extensive edits contained in the "correct" version was exchanged between Mr. Kachouroff and Ms. DeMaster on or around February 24–25, 2025. The version with the closest naming convention was the one attached to counsel's 2:42 p.m. e-mail, i.e., "2025.02.24 Coomer Defs Opp to MIL(jd).docx," *see supra* note 6, but it is clear from the correspondence between counsel that this is an earlier version than "2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions).docx," *see* [Doc. 311-3 at 1–

[7] This Court assumes defense counsel would contend that this statement is simply a typographical error.

2].

The "correct" version of the Opposition still has substantive errors, beginning with the case caption that read "The United States District Court for the District of Cite District." [Doc. 311-1 at 1 (emphasis added)]. It is difficult to square this version being the later, "correct" one with such an error that is not present in either the filed version that was presumably a draft or the other, earlier draft version in the record. [Doc. 283 at 1; Doc. 389-2 at 1]; *see also supra* note 6. The "correct" Opposition also refers to Dr. Coomer as such, instead of Mr. Coomer—despite Mr. Kachouroff's argument that referring to Plaintiff as Dr. Coomer was improper bolstering.[8] [Doc. 315 at 72:2–76:14]. And the two errors that the Court omitted from its discussion with Mr. Kachouroff during the Final Pretrial/Trial Preparation Conference, *see supra* at 3, remain in the "correct" Opposition, *see* [Doc. 311-1 at 2, 9–10].

Some errors that were specifically discussed during that conference also remain in the "correct" version. For instance, the "correct" version still relies on *Perrin v. Anderson*, 784 F.2d 1040, 1045 (10th Cir. 1986) for the proposition that:

> In defamation actions particularly, courts routinely admit evidence probative of truthfulness given that a plaintiff's reputation and credibility are directly at issue,

[Doc. 311-at 3]. But *Perrin* is a civil rights, not defamation, case, and it says nothing about "whether courts routinely admit evidence probative of truthfulness in defamation actions." *See generally* 784 F.2d 1040. Rather, the only reference to defamation is as an example of where the existence or nonexistence of a character trait may be directly at issue because the trait itself determines the rights and liabilities of the parties:

[8] The Court ultimately rejected this argument for lack of authority.

> In a defamation action, for example, the plaintiff's reputation for honesty is directly at issue when the defendant has called the plaintiff dishonest.

Perrin, 784 F.2d at 1045 (citations omitted). Further, the "correct" Opposition again misattributes *United States v. Hassan*, 742 F.3d 104, 133 (10th Cir. 2014) to the Tenth Circuit, when it is a case from the United States Court of Appeals for the Fourth Circuit. [Doc. 311-1 at 7]; *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014). This error is material because, unlike Tenth Circuit cases, Fourth Circuit cases are not binding on this Court. *See Hill v. Kansas Gas Serv. Co.*, 323 F.3d 858, 869 (10th Cir. 2003) (observing that courts within the Tenth Circuit are not bound by the case law from other circuits). And *United States v. Reaves*, 649 F.3d 862, 867–68 (8th Cir. 2011) is still described in its parenthetical as "analyzing evidence under multiple rules where it served overlapping purposes," [Doc. 311-1 at 10], when in actuality, the opinion only discusses Rule 608(b) of the Federal Rules of Evidence on a different page. *Reaves*, 649 F.3d at 866.

Moreover, to the extent defense counsel suggest that the Westlaw Report satisfied their Rule 11(b) duties with respect to confirming that their legal contentions were warranted by existing law, that Westlaw Report was generated against "2025.02.24 Coomer Defs Opp to MIL (jd) (final revisions).docx," not the "correct" version, i.e., "2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy." [Doc. 311-3 at 2]. Indeed, despite Mr. Kachouroff's insistence that "[p]rior to the pretrial conference, I reviewed our correct Opposition multiple times, including on my way to the funeral of a family member who had tragically and unexpectedly died on March 27, 2025. I believe the arguments we made were sound arguments and complied with Fed. R. Civ. P. 11(b)," [Doc. 311-6 at ¶ 29 (emphasis added)], there is no evidence in the record of when or how Mr. Kachouroff

ever obtained the "correct" version, i.e., "2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy," [Doc. 311-1], of the Opposition to review, prior to its submission on February 25, 2025 or prior to March 27, 2025.

4. General Practice

Finally, this Court turns to Mr. Kachouroff's statement that "Doc. 283 represents a clear deviation from what my practice has been, and given the number of errors, it is just as reasonable to presume that the document could have been a mistake, especially when I commented during the hearing that this must have been a draft." [Doc. 311-6 at ¶ 22]. But this assertion is belied by similar conduct before a different federal court. The Court takes judicial notice that, just seven days after this Court issued the Order to Show Cause, the same defense counsel team quietly filed two Notices of Errata[9] regarding their briefing in *Pelishek v. City of Sheboygan*, No. 2:23-cv-01048-WED (E.D. Wis. Apr. 30, 2025), ECF Nos. 160, 162. [Doc. 383-3; Doc. 383-4]. Those errata demonstrate the same type of errors in the filed Opposition, including citations to cases that do not exist. *See Pelishek*, ECF No. 125 at 9 (quoting *Swetlik v. Crawford*, 738 F.3d 818 (7th Cir. 2013) as discussing "falsified government records affecting taxpayer funds" when no such quote exists in the case); ECF No. 160 at 2 (correcting the *Swetlik* citation); ECF No. 143 at 23 (citing *Bohannan v. Doe*, 527 F. App'x 638, 744–45 (7th Cir. 2013),[10] 28–29 (citing *Gomez v.*

[9] The first filing, Notice of Errata for ECF 125, refers to Plaintiff's Brief in Support of Partial Summary Judgment filed in *Pelishek*. *Compare Pelishek*, ECF No. 125, *with id.* ECF No. 160]. The second filing, Notice of Errata for ECF 143, refers to Plaintiff's Brief in Opposition to Summary Judgment. *Compare id.* ECF No. 143, *with id.* ECF No. 162.

[10] The citation 527 F. App'x 638 appears to be associated with a case captioned *Esparza v. Cnty. of Los Angeles*, 527 F. App'x 638 (9th Cir. 2013).

City of Chicago, 2022 WL 3211422 (N.D. Ill. Aug. 9, 2022);[11] ECF No. 162 at 2–3 (removing citations to *Bohannon* and *Gomez*).

B. Sanctions

Based on the record before it, and for the reasons stated herein, this Court finds that Mr. Kachouroff and Ms. DeMaster have violated Rule 11 because they were not reasonable in certifying that the claims, defenses, and other legal contentions contained in Defendants' Opposition to Motion in Limine [Doc. 283] were warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. Fed. R. Civ. P. 11(b)(2). Nor is this Court persuaded by counsel's contention that that the "correct" version, i.e., 2025.02.24 Coomer Defs Opp to MIL2 (jd) – copy, was prepared and ready to file on February 25, 2025, and the filing of the Opposition at [Doc. 283] was simply an inadvertent error, given the contradictory statements and the lack of corroborating evidence.

Notwithstanding any suggestion to the contrary, this Court derives no joy from sanctioning attorneys who appear before it. Indeed, federal courts rely upon the assistance of attorneys as officers of the court for the efficient and fair administration of justice.[12] *See Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975) ("[L]awyers are essential to the primary governmental function of administering justice, and have

[11] The citation 2022 WL 3211422 refers to a case captioned *McKenna v. Verint Ams. Inc.*, No. 22-cv-02370-FLW, 2022 WL 3211422 (D.N.J. Aug. 9, 2022).

[12] As officers of the court, attorneys owe a duty of candor to the court and to opposing counsel. *See United States v. Busch*, No. 22-2161, 2024 WL 3580452, at *14 n.25 (10th Cir. July 30, 2024) ("[L]itigants and counsel who appear before a federal court[ ] are subject to duties of candor, decorum, and respect for the tribunal and co-parties alike." (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 722 (2013) (Kennedy, J., dissenting))), *cert. denied,* 145 S. Ct. 400 (2024).

historically been officers of the courts." (quotation omitted)). "Nevertheless, the court is entitled to expect a reasonable level of competence and care on the part of the attorneys who appear before it, and to expect that claims submitted for adjudication by those attorneys will have a rational basis." *White v. Gen. Motors Corp.*, 908 F.2d 675, 683 (10th Cir. 1990). That standard was not met here with the filing of Defendants' Opposition to Plaintiff's Motion in Limine. [Doc. 283].

Thus, the Court now turns to the appropriate sanction. "Rule 11 sanctions are meant to serve several purposes, including (1) deterring future litigation abuse, (2) punishing present litigation abuse, (3) compensating victims of litigation abuse, and (4) streamlining court dockets and facilitating case management," with deterrence as the primary goal. *Id*. Though not bound by other district courts, this Court finds that a sanction of $3,000 against Christopher I. Kachouroff and the law firm of McSweeney Cynkar & Kachouroff PLLC, jointly and severally, and $3,000 against Ms. DeMaster, individually, is the least severe sanction adequate to deter and punish defense counsel in this instance. *Id*. at 684; *see also Wadsworth*, 348 F.R.D. at 497–98 (imposing $3,000 fine on attorney who drafted filing with hallucinated citations); *Mata*, 678 F. Supp. 3d at 466 (imposing $5,000 fine jointly on two attorneys for hallucinated citations); *Mid Cent. Eng'rs Operating Health & Welfare Fund v. HoosierVac LLC*, No. 2:24-cv-00326-JPH-MJD, 2025 WL 1511211, at *2 (sanctioning attorney $6,000 for submitting three briefs with AI-generated citations). Because Mr. Kachouroff "confirm[ed] that I did not advise Defendants that I use a myriad of AI tools in my practice such as Microsoft Word's Co-Pilot, Westlaw's AI, Google's Gemini, X's Grok, Claude, ChatGPT, Perplexity, and others," [Doc. 311-6 at ¶ 30], this Court does not extend the sanctions to Defendants

Michael J. Lindell, Frankspeech LLC, or My Pillow, Inc.

CONCLUSION

For the reasons set forth herein, **IT IS ORDERED** that:

(1) The Order to Show Cause [Doc. 309] is **MADE ABSOLUTE**;

(2) The Court hereby **SANCTIONS** Christopher I. Kachouroff and the law firm of McSweeney Cynkar & Kachouroff PLLC, jointly and severally, in the amount of $3,000 pursuant to Rule 11(c)(1);

(3) The Court hereby **SANCTIONS** Jennifer T. DeMaster in the amount of $3,000 pursuant to Rule 11(c)(1); and

(4) Such sanctions are **DUE and PAYABLE** to the Registry of the United States District Court for the District of Colorado no later than August 4, 2025.

DATED: July 7, 2025

BY THE COURT:

Nina Y. Wang
United States District Judge

113 S.Ct. 2786
Supreme Court of the United States

William DAUBERT, et ux., etc., et al., Petitioners,
v.
MERRELL DOW PHARMACEUTICALS, INC.

No. 92–102
|
Argued March 30, 1993
|
Decided June 28, 1993.

Synopsis

Infants and their guardians ad litem sued pharmaceutical company to recover for limb reduction birth defects allegedly sustained as result of mothers' ingestion of antinausea drug Bendectin. The United States District Court for the Southern District of California, 727 F.Supp. 570, granted company's motion for summary judgment, and plaintiffs appealed. The Court of Appeals, 951 F.2d 1128, affirmed. Plaintiffs filed petition for writ of certiorari, which was granted. The Supreme Court, Justice Blackmun, held that: (1) "general acceptance" is not necessary precondition to admissibility of scientific evidence under Federal Rules of Evidence, and (2) Rules assign to trial judge the task of ensuring that expert's testimony both rests on reliable foundation and is relevant to task at hand.

Vacated and remanded.

Chief Justice Rehnquist filed opinion concurring in part and dissenting in part in which Justice Stevens joined.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

****2789** *Syllabus* [*]

Petitioners, two minor children and their parents, alleged in their suit against respondent that the children's serious birth defects had been caused by the mothers' prenatal ingestion of Bendectin, a prescription drug marketed by respondent. The District Court granted respondent summary judgment based on a well-credentialed expert's affidavit concluding, upon reviewing the extensive published scientific literature on the subject, that maternal use of Bendectin has not been shown to be a risk factor for human birth defects. Although petitioners had responded with the testimony of eight other well-credentialed experts, who based their conclusion ****2790** that Bendectin can cause birth defects on animal studies, chemical structure analyses, and the unpublished "reanalysis" of previously published human statistical studies, the court determined that this evidence did not meet the applicable "general acceptance" standard for the admission of expert testimony. The Court of Appeals agreed and affirmed, citing *Frye v. United States,* 54 App.D.C. 46, 47, 293 F. 1013, 1014, for the rule that expert opinion based on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community.

Held: The Federal Rules of Evidence, not *Frye,* provide the standard for admitting expert scientific testimony in a federal trial. Pp. 2792–99.

(a) *Frye*'s "general acceptance" test was superseded by the Rules' adoption. The Rules occupy the field, *United States v. Abel,* 469 U.S. 45, 49, 105 S.Ct. 465, 467, 83 L.Ed.2d 450, and, although the common law of evidence may serve as an aid to their application, *id.,* at 51–52, 105 S.Ct., at 468–469, respondent's assertion that they somehow assimilated *Frye* is unconvincing. Nothing in the Rules as a whole or in the text and drafting history of Rule 702, which specifically governs expert testimony, gives any indication that "general acceptance" is a necessary precondition to the admissibility of scientific evidence. Moreover, such a rigid standard would be at odds with the Rules' liberal thrust and their general approach of relaxing the traditional barriers to "opinion" testimony. Pp. 2792–94.

(b) The Rules—especially Rule 702—place appropriate limits on the admissibility of purportedly scientific evidence by assigning to the trial ***580** judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. The reliability standard is established by Rule 702's requirement that an expert's testimony pertain to "scientific ... knowledge," since the adjective "scientific" implies a grounding in science's methods and procedures, while the word " knowledge" connotes a body of known facts or of ideas inferred from such facts or accepted as true on good grounds. The Rule's requirement that the testimony "assist the trier of fact to understand the evidence or to determine a fact in issue" goes primarily to relevance by demanding a valid scientific connection to the pertinent inquiry as a precondition to admissibility. Pp. 2794–96.

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(c) Faced with a proffer of expert scientific testimony under Rule 702, the trial judge, pursuant to Rule 104(a), must make a preliminary assessment of whether the testimony's underlying reasoning or methodology is scientifically valid and properly can be applied to the facts at issue. Many considerations will bear on the inquiry, including whether the theory or technique in question can be (and has been) tested, whether it has been subjected to peer review and publication, its known or potential error rate and the existence and maintenance of standards controlling its operation, and whether it has attracted widespread acceptance within a relevant scientific community. The inquiry is a flexible one, and its focus must be solely on principles and methodology, not on the conclusions that they generate. Throughout, the judge should also be mindful of other applicable Rules. Pp. 2796–98.

(d) Cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof, rather than wholesale exclusion under an uncompromising "general acceptance" standard, is the appropriate means by which evidence based on valid principles may be challenged. That even limited screening by the trial judge, on occasion, will prevent the jury from hearing of authentic scientific breakthroughs is simply a consequence of the fact that the Rules are not designed to seek cosmic understanding but, rather, to resolve legal disputes. Pp. 2798–99.

951 F.2d 1128 (CA9 1991), vacated and remanded.

****2791** BLACKMUN, J., delivered the opinion for a unanimous Court with respect to Parts I and II–A, and the opinion of the Court with respect to Parts II–B, II–C, III, and IV, in which WHITE, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. REHNQUIST, C.J., filed an opinion concurring in part and dissenting in part, in which STEVENS, J., joined, *post,* p. ——.

Attorneys and Law Firms

***581** Michael H. Gottesman, Washington, DC, for petitioners.

Charles Fried, Cambridge, MA, for respondent.

Opinion

***582** Justice BLACKMUN delivered the opinion of the Court.

In this case we are called upon to determine the standard for admitting expert scientific testimony in a federal trial.

I

Petitioners Jason Daubert and Eric Schuller are minor children born with serious birth defects. They and their parents sued respondent in California state court, alleging that the birth defects had been caused by the mothers' ingestion of Bendectin, a prescription antinausea drug marketed by respondent. Respondent removed the suits to federal court on diversity grounds.

After extensive discovery, respondent moved for summary judgment, contending that Bendectin does not cause birth defects in humans and that petitioners would be unable to come forward with any admissible evidence that it does. In support of its motion, respondent submitted an affidavit of Steven H. Lamm, physician and epidemiologist, who is a well-credentialed expert on the risks from exposure to various chemical substances. [1] Doctor Lamm stated that he had reviewed all the literature on Bendectin and human birth defects—more than 30 published studies involving over 130,000 patients. No study had found Bendectin to be a human teratogen (*i.e.,* a substance capable of causing malformations in fetuses). On the basis of this review, Doctor Lamm concluded that maternal use of Bendectin during the first trimester of pregnancy has not been shown to be a risk factor for human birth defects.

***583** Petitioners did not (and do not) contest this characterization of the published record regarding Bendectin. Instead, they responded to respondent's motion with the testimony of eight experts of their own, each of whom also possessed impressive credentials. [2] These experts had concluded that Bendectin can cause birth defects. Their conclusions were based upon "in vitro" (test tube) and "in vivo" (live) animal studies that found a link between Bendectin and malformations; pharmacological studies of the chemical structure of Bendectin that purported to show similarities between the structure of the drug and that of other substances known to cause birth defects; and the "reanalysis" of previously ****2792** published epidemiological (human statistical) studies.

The District Court granted respondent's motion for summary judgment. The court stated that scientific evidence is admissible only if the principle upon which it is based is

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" 'sufficiently established to have general acceptance in the field to which it belongs.' " 727 F.Supp. 570, 572 (S.D.Cal.1989), quoting *United States v. Kilgus,* 571 F.2d 508, 510 (CA9 1978). The court concluded that petitioners' evidence did not meet this standard. Given the vast body of epidemiological data concerning Bendectin, the court held, expert opinion which is not based on epidemiological evidence ***584** is not admissible to establish causation. 727 F.Supp., at 575. Thus, the animal-cell studies, live-animal studies, and chemical-structure analyses on which petitioners had relied could not raise by themselves a reasonably disputable jury issue regarding causation. *Ibid.* Petitioners' epidemiological analyses, based as they were on recalculations of data in previously published studies that had found no causal link between the drug and birth defects, were ruled to be inadmissible because they had not been published or subjected to peer review. *Ibid.*

The United States Court of Appeals for the Ninth Circuit affirmed. 951 F.2d 1128 (1991). Citing *Frye v. United States,* 54 App.D.C. 46, 47, 293 F. 1013, 1014 (1923), the court stated that expert opinion based on a scientific technique is inadmissible unless the technique is "generally accepted" as reliable in the relevant scientific community. 951 F.2d, at 1129–1130. The court declared that expert opinion based on a methodology that diverges "significantly from the procedures accepted by recognized authorities in the field ... cannot be shown to be 'generally accepted as a reliable technique.' " *Id.,* at 1130, quoting *United States v. Solomon,* 753 F.2d 1522, 1526 (CA9 1985).

The court emphasized that other Courts of Appeals considering the risks of Bendectin had refused to admit reanalyses of epidemiological studies that had been neither published nor subjected to peer review. 951 F.2d, at 1130–1131. Those courts had found unpublished reanalyses "particularly problematic in light of the massive weight of the original published studies supporting [respondent's] position, all of which had undergone full scrutiny from the scientific community." *Id.,* at 1130. Contending that reanalysis is generally accepted by the scientific community only when it is subjected to verification and scrutiny by others in the field, the Court of Appeals rejected petitioners' reanalyses as "unpublished, not subjected to the normal peer review process and generated solely for use in litigation." *Id.,* at 1131. The ***585** court concluded that petitioners' evidence provided an insufficient foundation to allow admission of expert testimony that Bendectin caused their injuries and, accordingly, that petitioners could not satisfy their burden of proving causation at trial.

We granted certiorari, 506 U.S. 914, 113 S.Ct. 320, 121 L.Ed.2d 240 (1992), in light of sharp divisions among the courts regarding the proper standard for the admission of expert testimony. Compare, *e.g., United States v. Shorter,* 257 U.S.App.D.C. 358, 363–364, 809 F.2d 54, 59–60 (applying the "general acceptance" standard), cert. denied, 484 U.S. 817, 108 S.Ct. 71, 98 L.Ed.2d 35 (1987), with *DeLuca v. Merrell Dow Pharmaceuticals, Inc.,* 911 F.2d 941, 955 (CA3 1990) (rejecting the "general acceptance" standard).

II

A

In the 70 years since its formulation in the *Frye* case, the "general acceptance" test has been the dominant standard for determining the admissibility of novel scientific evidence at trial. See E. Green & C. Nesson, Problems, Cases, and Materials on Evidence 649 (1983). Although under increasing attack of late, the rule continues to be followed by a ****2793** majority of courts, including the Ninth Circuit. [3]

The *Frye* test has its origin in a short and citation-free 1923 decision concerning the admissibility of evidence derived from a systolic blood pressure deception test, a crude precursor to the polygraph machine. In what has become a famous (perhaps infamous) passage, the then Court of Appeals for the District of Columbia described the device and its operation and declared:

> "Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages ***586** is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, *the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.*" 54 App.D.C., at 47, 293 F., at 1014 (emphasis added).

Because the deception test had "not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the courts in

admitting expert testimony deduced from the discovery, development, and experiments thus far made," evidence of its results was ruled inadmissible. *Ibid.*

The merits of the *Frye* test have been much debated, and scholarship on its proper scope and application is legion. [4] ***587** Petitioners' primary attack, however, is not on the content but on the continuing authority of the rule. They contend that the *Frye* test was superseded by the adoption of the Federal Rules of Evidence. [5] We agree.

We interpret the legislatively enacted Federal Rules of Evidence as we would any statute. *Beech Aircraft Corp. v. Rainey,* 488 U.S. 153, 163, 109 S.Ct. 439, 446, 102 L.Ed.2d 445 (1988). Rule 402 provides the baseline:

> "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, ****2794** by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible."

"Relevant evidence" is defined as that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401. The Rule's basic standard of relevance thus is a liberal one.

Frye, of course, predated the Rules by half a century. In *United States v. Abel,* 469 U.S. 45, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984), we considered the pertinence of background common law in interpreting the Rules of Evidence. We noted that the Rules occupy the field, *id.,* at 49, 105 S.Ct., at 467, but, quoting Professor Cleary, the Reporter, ***588** explained that the common law nevertheless could serve as an aid to their application:

> " 'In principle, under the Federal Rules no common law of evidence remains. "All relevant evidence is admissible, except as otherwise provided...." In reality, of course, the body of common law knowledge continues to exist, though in the somewhat altered form of a source of guidance in the exercise of delegated powers.' " *Id.,* at 51–52, 105 S.Ct., at 469.

We found the common-law precept at issue in the *Abel* case entirely consistent with Rule 402's general requirement of admissibility, and considered it unlikely that the drafters had intended to change the rule. *Id.,* at 50–51, 105 S.Ct., at 468–469. In *Bourjaily v. United States,* 483 U.S. 171, 107 S.Ct. 2775, 97 L.Ed.2d 144 (1987), on the other hand, the Court was unable to find a particular common-law doctrine in the Rules, and so held it superseded.

Here there is a specific Rule that speaks to the contested issue. Rule 702, governing expert testimony, provides:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

Nothing in the text of this Rule establishes "general acceptance" as an absolute prerequisite to admissibility. Nor does respondent present any clear indication that Rule 702 or the Rules as a whole were intended to incorporate a "general acceptance" standard. The drafting history makes no mention of *Frye,* and a rigid "general acceptance" requirement would be at odds with the "liberal thrust" of the Federal Rules and their "general approach of relaxing the traditional barriers to 'opinion' testimony." *Beech Aircraft Corp. v. Rainey,* 488 U.S., at 169, 109 S.Ct., at 450 (citing Rules 701 to 705). See also Weinstein, ***589** Rule 702 of the Federal Rules of Evidence is Sound; It Should Not Be Amended, 138 F.R.D. 631 (1991) ("The Rules were designed to depend primarily upon lawyer-adversaries and sensible triers of fact to evaluate conflicts"). Given the Rules' permissive backdrop and their inclusion of a specific rule on expert testimony that does not mention " 'general acceptance,' " the assertion that the Rules somehow assimilated *Frye* is unconvincing. *Frye* made "general acceptance" the exclusive test for admitting expert scientific testimony. That austere standard, absent from, and incompatible with, the Federal Rules of Evidence, should not be applied in federal trials. [6]

B

That the *Frye* test was displaced by the Rules of Evidence does not mean, ****2795** however, that the Rules themselves place no limits on the admissibility of purportedly scientific evidence. [7] Nor is the trial judge disabled from screening such evidence. To the contrary, under the Rules the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.

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The primary locus of this obligation is Rule 702, which clearly contemplates some degree of regulation of the subjects and theories about which an expert may testify. "*If scientific,* technical, or other specialized *knowledge will assist the trier of fact* to understand the evidence or to determine a fact in issue" an expert "may testify *thereto.*" (Emphasis added.) The subject of an expert's testimony must ***590** be "scientific ... knowledge."[8] The adjective " scientific" implies a grounding in the methods and procedures of science. Similarly, the word "knowledge" connotes more than subjective belief or unsupported speculation. The term "applies to any body of known facts or to any body of ideas inferred from such facts or accepted as truths on good grounds." Webster's Third New International Dictionary 1252 (1986). Of course, it would be unreasonable to conclude that the subject of scientific testimony must be "known" to a certainty; arguably, there are no certainties in science. See, *e.g.,* Brief for Nicolaas Bloembergen et al. as *Amici Curiae* 9 ("Indeed, scientists do not assert that they know what is immutably 'true'—they are committed to searching for new, temporary, theories to explain, as best they can, phenomena"); Brief for American Association for the Advancement of Science et al. as *Amici Curiae* 7–8 ("Science is not an encyclopedic body of knowledge about the universe. Instead, it represents a *process* for proposing and refining theoretical explanations about the world that are subject to further testing and refinement" (emphasis in original)). But, in order to qualify as "scientific knowledge," an inference or assertion must be derived by the scientific method. Proposed testimony must be supported by appropriate validation—*i.e.,* "good grounds," based on what is known. In short, the requirement that an expert's testimony pertain to " scientific knowledge" establishes a standard of evidentiary reliability.[9]

***591** Rule 702 further requires that the evidence or testimony "assist the trier of fact to understand the evidence or to determine a fact in issue." This condition goes primarily to relevance. " Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." 3 Weinstein & Berger ¶ 702[02], p. 702–18. See also *United States v. Downing,* 753 F.2d 1224, 1242 (CA3 1985) ("An additional consideration ****2796** under Rule 702—and another aspect of relevancy—is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute"). The consideration has been aptly described by Judge Becker as one of "fit." *Ibid.* "Fit" is not always obvious, and scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes. See Starrs, *Frye v. United States* Restructured and Revitalized: A Proposal to Amend Federal Evidence Rule 702, 26 Jurimetrics J. 249, 258 (1986). The study of the phases of the moon, for example, may provide valid scientific "knowledge" about whether a certain night was dark, and if darkness is a fact in issue, the knowledge will assist the trier of fact. However (absent creditable grounds supporting such a link), evidence that the moon was full on a certain night will not assist the trier of fact in determining whether an individual was unusually likely to have behaved irrationally on that night. Rule 702's "helpfulness" ***592** standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.

That these requirements are embodied in Rule 702 is not surprising. Unlike an ordinary witness, see Rule 701, an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation. See Rules 702 and 703. Presumably, this relaxation of the usual requirement of firsthand knowledge—a rule which represents "a 'most pervasive manifestation' of the common law insistence upon 'the most reliable sources of information,' " Advisory Committee's Notes on Fed.Rule Evid. 602, 28 U.S.C.App., p. 755 (citation omitted)—is premised on an assumption that the expert's opinion will have a reliable basis in the knowledge and experience of his discipline.

Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset, pursuant to Rule 104(a),[10] whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.[11] This entails a preliminary assessment of whether the reasoning or methodology ***593** underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. We are confident that federal judges possess the capacity to undertake this review. Many factors will bear on the inquiry, and we do not presume to set out a definitive checklist or test. But some general observations are appropriate.

Ordinarily, a key question to be answered in determining whether a theory or technique is scientific knowledge that will assist the trier of fact will be whether it can be (and has been) tested. "Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from

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other fields of human inquiry." Green 645. See also C. Hempel, Philosophy of Natural Science 49 (1966) ****2797** ("[T]he statements constituting a scientific explanation must be capable of empirical test"); K. Popper, Conjectures and Refutations: The Growth of Scientific Knowledge 37 (5th ed. 1989) ("[T]he criterion of the scientific status of a theory is its falsifiability, or refutability, or testability") (emphasis deleted).

Another pertinent consideration is whether the theory or technique has been subjected to peer review and publication. Publication (which is but one element of peer review) is not a *sine qua non* of admissibility; it does not necessarily correlate with reliability, see S. Jasanoff, The Fifth Branch: Science Advisors as Policymakers 61–76 (1990), and in some instances well-grounded but innovative theories will not have been published, see Horrobin, The Philosophical Basis of Peer Review and the Suppression of Innovation, 263 JAMA 1438 (1990). Some propositions, moreover, are too particular, too new, or of too limited interest to be published. But submission to the scrutiny of the scientific community is a component of "good science," in part because it increases the likelihood that substantive flaws in methodology will be detected. See J. Ziman, Reliable Knowledge: An Exploration ***594** of the Grounds for Belief in Science 130–133 (1978); Relman & Angell, How Good Is Peer Review?, 321 New Eng.J.Med. 827 (1989). The fact of publication (or lack thereof) in a peer reviewed journal thus will be a relevant, though not dispositive, consideration in assessing the scientific validity of a particular technique or methodology on which an opinion is premised.

Additionally, in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error, see, *e.g., United States v. Smith,* 869 F.2d 348, 353–354 (CA7 1989) (surveying studies of the error rate of spectrographic voice identification technique), and the existence and maintenance of standards controlling the technique's operation, see *United States v. Williams,* 583 F.2d 1194, 1198 (CA2 1978) (noting professional organization's standard governing spectrographic analysis), cert. denied, 439 U.S. 1117, 99 S.Ct. 1025, 59 L.Ed.2d 77 (1979).

Finally, "general acceptance" can yet have a bearing on the inquiry. A "reliability assessment does not require, although it does permit, explicit identification of a relevant scientific community and an express determination of a particular degree of acceptance within that community." *United States v. Downing,* 753 F.2d, at 1238. See also 3 Weinstein & Berger ¶ 702[03], pp. 702–41 to 702–42. Widespread acceptance can be an important factor in ruling particular evidence admissible, and "a known technique which has been able to attract only minimal support within the community," *Downing,* 753 F.2d, at 1238, may properly be viewed with skepticism.

The inquiry envisioned by Rule 702 is, we emphasize, a flexible one.[12] Its overarching subject is the scientific validity ***595** and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission. The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.

Throughout, a judge assessing a proffer of expert scientific testimony under Rule 702 should also be mindful of other applicable rules. Rule 703 provides that expert opinions based on otherwise inadmissible ****2798** hearsay are to be admitted only if the facts or data are "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." Rule 706 allows the court at its discretion to procure the assistance of an expert of its own choosing. Finally, Rule 403 permits the exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...." Judge Weinstein has explained: "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses." Weinstein, 138 F.R.D., at 632.

III

We conclude by briefly addressing what appear to be two underlying concerns of the parties and *amici* in this case. Respondent expresses apprehension that abandonment of "general acceptance" as the exclusive requirement for admission will result in a "free-for-all" in which befuddled juries are confounded by absurd and irrational pseudoscientific assertions. ***596** In this regard respondent seems to us to be overly pessimistic about the capabilities of the jury and of the adversary system generally. Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. See *Rock v. Arkansas,* 483 U.S. 44, 61, 107

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S.Ct. 2704, 2714, 97 L.Ed.2d 37 (1987). Additionally, in the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free to direct a judgment, Fed.Rule Civ.Proc. 50(a), and likewise to grant summary judgment, Fed.Rule Civ.Proc. 56. Cf., *e.g., Turpin v. Merrell Dow Pharmaceuticals, Inc.,* 959 F.2d 1349 (CA6) (holding that scientific evidence that provided foundation for expert testimony, viewed in the light most favorable to plaintiffs, was not sufficient to allow a jury to find it more probable than not that defendant caused plaintiff's injury), cert. denied, 506 U.S. 826, 113 S.Ct. 84, 121 L.Ed.2d 47 (1992); *Brock v. Merrell Dow Pharmaceuticals, Inc.,* 874 F.2d 307 (CA5 1989) (reversing judgment entered on jury verdict for plaintiffs because evidence regarding causation was insufficient), modified, 884 F.2d 166 (CA5 1989), cert. denied, 494 U.S. 1046, 110 S.Ct. 1511, 108 L.Ed.2d 646 (1990); Green 680–681. These conventional devices, rather than wholesale exclusion under an uncompromising "general acceptance" test, are the appropriate safeguards where the basis of scientific testimony meets the standards of Rule 702.

Petitioners and, to a greater extent, their *amici* exhibit a different concern. They suggest that recognition of a screening role for the judge that allows for the exclusion of "invalid" evidence will sanction a stifling and repressive scientific orthodoxy and will be inimical to the search for truth. See, *e.g.,* Brief for Ronald Bayer et al. as *Amici Curiae.* It is true that open debate is an essential part of both legal and scientific analyses. Yet there are important differences between the quest for truth in the courtroom and the quest ***597** for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly. The scientific project is advanced by broad and wide-ranging consideration of a multitude of hypotheses, for those that are incorrect will eventually be shown to be so, and that in itself is an advance. Conjectures that are probably wrong are of little use, however, in the project of reaching a quick, final, and binding legal judgment—often of great consequence—about a particular set of events in the past. We recognize that, in practice, a gatekeeping role for the judge, no matter how flexible, inevitably on occasion will prevent the jury from learning of authentic ****2799** insights and innovations. That, nevertheless, is the balance that is struck by Rules of Evidence designed not for the exhaustive search for cosmic understanding but for the particularized resolution of legal disputes. [13]

IV

To summarize: "General acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence—especially Rule 702—do assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

The inquiries of the District Court and the Court of Appeals focused almost exclusively on "general acceptance," as gauged by publication and the decisions of other courts. Accordingly, ***598** the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Chief Justice REHNQUIST, with whom Justice STEVENS joins, concurring in part and dissenting in part.

The petition for certiorari in this case presents two questions: first, whether the rule of *Frye v. United States,* 54 App.D.C. 46, 293 F. 1013 (1923), remains good law after the enactment of the Federal Rules of Evidence; and second, if *Frye* remains valid, whether it requires expert scientific testimony to have been subjected to a peer review process in order to be admissible. The Court concludes, correctly in my view, that the *Frye* rule did not survive the enactment of the Federal Rules of Evidence, and I therefore join Parts I and II–A of its opinion. The second question presented in the petition for certiorari necessarily is mooted by this holding, but the Court nonetheless proceeds to construe Rules 702 and 703 very much in the abstract, and then offers some "general observations." *Ante,* at 2796.

"General observations" by this Court customarily carry great weight with lower federal courts, but the ones offered here suffer from the flaw common to most such observations—they are not applied to deciding whether particular testimony was or was not admissible, and therefore they tend to be not only general, but vague and abstract. This is particularly unfortunate in a case such as this, where the ultimate legal question depends on an appreciation of one or more bodies of knowledge not judicially noticeable, and subject to different

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interpretations in the briefs of the parties and their *amici.* Twenty-two *amicus* briefs have been filed in the case, and indeed the Court's opinion contains no fewer than 37 citations to *amicus* briefs and other secondary sources.

***599** The various briefs filed in this case are markedly different from typical briefs, in that large parts of them do not deal with decided cases or statutory language—the sort of material we customarily interpret. Instead, they deal with definitions of scientific knowledge, scientific method, scientific validity, and peer review—in short, matters far afield from the expertise of judges. This is not to say that such materials are not useful or even necessary in deciding how Rule 703 should be applied; but it is to say that the unusual subject matter should cause us to proceed with great caution in deciding more than we have to, because our reach can so easily exceed our grasp.

But even if it were desirable to make "general observations" not necessary to decide ****2800** the questions presented, I cannot subscribe to some of the observations made by the Court. In Part II–B, the Court concludes that reliability and relevancy are the touchstones of the admissibility of expert testimony. *Ante,* at 2794–95. Federal Rule of Evidence 402 provides, as the Court points out, that "[e]vidence which is not relevant is not admissible." But there is no similar reference in the Rule to "reliability." The Court constructs its argument by parsing the language "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, ... an expert ... may testify thereto...." Fed.Rule Evid. 702. It stresses that the subject of the expert's testimony must be "scientific ... knowledge," and points out that "scientific" "implies a grounding in the methods and procedures of science" and that the word "knowledge" "connotes more than subjective belief or unsupported speculation." *Ante,* at 2794–95. From this it concludes that "scientific knowledge" must be "derived by the scientific method." *Ante,* at 2795. Proposed testimony, we are told, must be supported by "appropriate validation." *Ante,* at 2795. Indeed, in footnote 9, the Court decides that "[i]n a case involving scientific evidence, evidentiaryreliability ***600** will be based upon *scientific validity.*" *Ante,* at 2795, n. 9 (emphasis inoriginal).

Questions arise simply from reading this part of the Court's opinion, and countless more questions will surely arise when hundreds of district judges try to apply its teaching to particular offers of expert testimony. Does all of this *dicta* apply to an expert seeking to testify on the basis of "technical or other specialized knowledge"—the other types of expert knowledge to which Rule 702 applies—or are the "general observations" limited only to "scientific knowledge"? What is the difference between scientific knowledge and technical knowledge; does Rule 702 actually contemplate that the phrase "scientific, technical, or other specialized knowledge" be broken down into numerous subspecies of expertise, or did its authors simply pick general descriptive language covering the sort of expert testimony which courts have customarily received? The Court speaks of its confidence that federal judges can make a "preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Ante,* at 2796. The Court then states that a "key question" to be answered in deciding whether something is "scientific knowledge" "will be whether it can be (and has been) tested." *Ante,* at 2796. Following this sentence are three quotations from treatises, which not only speak of empirical testing, but one of which states that the " 'criterion of the scientific status of a theory is its falsifiability, or refutability, or testability,' " *Ante,* at 2796–97.

I defer to no one in my confidence in federal judges; but I am at a loss to know what is meant when it is said that the scientific status of a theory depends on its "falsifiability," and I suspect some of them will be, too.

I do not doubt that Rule 702 confides to the judge some gatekeeping responsibility in deciding questions of the admissibility of proffered expert testimony. But I do not think ***601** it imposes on them either the obligation or the authority to become amateur scientists in order to perform that role. I think the Court would be far better advised in this case to decide only the questions presented, and to leave the further development of this important area of the law to future cases.

All Citations

509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469, 61 USLW 4805, 27 U.S.P.Q.2d 1200, 23 Envtl. L. Rep. 20,979, 37 Fed. R. Evid. Serv. 1, Prod.Liab.Rep. (CCH) P 13,494

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Doctor Lamm received his master's and doctor of medicine degrees from the University of Southern California. He has served as a consultant in birth-defect epidemiology for the National Center for Health Statistics and has published numerous articles on the magnitude of risk from exposure to various chemical and biological substances. App. 34–44.

2 For example, Shanna Helen Swan, who received a master's degree in biostatistics from Columbia University and a doctorate in statistics from the University of California at Berkeley, is chief of the section of the California Department of Health and Services that determines causes of birth defects and has served as a consultant to the World Health Organization, the Food and Drug Administration, and the National Institutes of Health. *Id.,* at 113–114, 131–132. Stuart A. Newman, who received his bachelor's degree in chemistry from Columbia University and his master's and doctorate in chemistry from the University of Chicago, is a professor at New York Medical College and has spent over a decade studying the effect of chemicals on limb development. *Id.,* at 54–56. The credentials of the others are similarly impressive. See *Id.,* at 61–66, 73–80, 148–153, 187–192, and Attachments 12, 20, 21, 26, 31, and 32 to Petitioners' Opposition to Summary Judgment in No. 84–2013–G(I) (SD Cal.).

3 For a catalog of the many cases on either side of this controversy, see P. Giannelli & E. Imwinkelried, Scientific Evidence § 1–5, pp. 10–14 (1986 and Supp.1991).

4 See, *e.g.,* Green, Expert Witnesses and Sufficiency of Evidence in Toxic Substances Litigation: The Legacy of *Agent Orange* and Bendectin Litigation, 86 Nw.U.L.Rev. 643 (1992) (hereinafter Green); Becker & Orenstein, The Federal Rules of Evidence After Sixteen Years—the Effect of "Plain Meaning" Jurisprudence, the Need for an Advisory Committee on the Rules of Evidence, and Suggestions for Selective Revision of the Rules, 60 Geo.Wash.L.Rev. 857, 876–885 (1992); Hanson, James Alphonzo Frye is Sixty–Five Years Old; Should He Retire?," 16 West.St.U.L.Rev. 357 (1989); Black, A Unified Theory of Scientific Evidence, 56 Ford.L.Rev. 595 (1988); Imwinkelried, The "Bases" of Expert Testimony: The Syllogistic Structure of Scientific Testimony, 67 N.C.L.Rev. 1 (1988); Proposals for a Model Rule on the Admissibility of Scientific Evidence, 26 Jurimetrics J. 235 (1986); Giannelli, The Admissibility of Novel Scientific Evidence: *Frye v. United States,* a Half–Century Later, 80 Colum.L.Rev. 1197 (1980); The Supreme Court, 1986 Term, 101 Harv.L.Rev. 7, 119, 125–127 (1987).

Indeed, the debates over *Frye* are such a well-established part of the academic landscape that a distinct term—"*Frye*–ologist"—has been advanced to describe those who take part. See Behringer, Introduction, Proposals for a Model Rule on the Admissibility of Scientific Evidence, 26 Jurimetrics J. 237, 239 (1986), quoting Lacey, Scientific Evidence, 24 Jurimetrics J. 254, 264 (1984).

5 Like the question of *Frye's* merit, the dispute over its survival has divided courts and commentators. Compare, *e.g., United States v. Williams,* 583 F.2d 1194 (CA2 1978) (*Frye* is superseded by the Rules of Evidence), cert. denied, 439 U.S. 1117, 99 S.Ct. 1025, 59 L.Ed.2d 77 (1979) with *Christophersen v. Allied–Signal Corp.,* 939 F.2d 1106, 1111, 1115–1116 (CA5 1991) (en banc) (*Frye* and the Rules coexist), cert. denied, 503 U.S. 912, 112 S.Ct. 1280, 117 L.Ed.2d 506 (1992), 3 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 702[03], pp. 702–36 to 702–37 (1988) (hereinafter Weinstein & Berger) (*Frye* is dead), and M. Graham, Handbook of Federal Evidence § 703.2 (3d ed. 1991) (*Frye* lives). See generally P. Giannelli & E. Imwinkelried, Scientific Evidence § 1–5, at 28–29 (citing authorities).

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6 Because we hold that *Frye* has been superseded and base the discussion that follows on the content of the congressionally enacted Federal Rules of Evidence, we do not address petitioners' argument that application of the *Frye* rule in this diversity case, as the application of a judge-made rule affecting substantive rights, would violate the doctrine of *Erie R. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

7 THE CHIEF JUSTICE "do[es] not doubt that Rule 702 confides to the judge some gatekeeping responsibility," *post,* at 2800, but would neither say how it does so nor explain what that role entails. We believe the better course is to note the nature and source of the duty.

8 Rule 702 also applies to "technical, or other specialized knowledge." Our discussion is limited to the scientific context because that is the nature of the expertise offered here.

9 We note that scientists typically distinguish between "validity" (does the principle support what it purports to show?) and "reliability" (does application of the principle produce consistent results?). See Black, 56 Ford.L.Rev., at 599. Although "the difference between accuracy, validity, and reliability may be such that each is distinct from the other by no more than a hen's kick," Starrs, *Frye v. United States* Restructured and Revitalized: A Proposal to Amend Federal Evidence Rule 702, 26 Jurimetrics J. 249, 256 (1986), our reference here is to *evidentiary* reliability—that is, trustworthiness. Cf., *e.g.,* Advisory Committee's Notes on Fed.Rule Evid. 602, 28 U.S.C.App., p. 755 (" '[T]he rule requiring that a witness who testifies to a fact which can be perceived by the senses must have had an opportunity to observe, and must have actually observed the fact' is a 'most pervasive manifestation' of the common law insistence upon 'the most reliable sources of information' " (citation omitted)); Advisory Committee's Notes on Art. VIII of Rules of Evidence, 28 U.S.C.App., p. 770 (hearsay exceptions will be recognized only "under circumstances supposed to furnish guarantees of trustworthiness"). In a case involving scientific evidence, *evidentiary reliability* will be based upon *scientific validity.*

10 Rule 104(a) provides:

"Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b) [pertaining to conditional admissions]. In making its determination it is not bound by the rules of evidence except those with respect to privileges." These matters should be established by a preponderance of proof. See *Bourjaily v. United States,* 483 U.S. 171, 175–176, 107 S.Ct. 2775, 2778–2779, 97 L.Ed.2d 144 (1987).

11 Although the *Frye* decision itself focused exclusively on "novel" scientific techniques, we do not read the requirements of Rule 702 to apply specially or exclusively to unconventional evidence. Of course, well-established propositions are less likely to be challenged than those that are novel, and they are more handily defended. Indeed, theories that are so firmly established as to have attained the status of scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under Federal Rule of Evidence 201.

12 A number of authorities have presented variations on the reliability approach, each with its own slightly different set of factors. See, *e.g., Downing,* 753 F.2d, at 1238–1239 (on which our discussion draws in part); 3 Weinstein & Berger ¶ 702[03], pp. 702–41 to 702–42 (on which the *Downing* court in turn partially relied); McCormick, Scientific Evidence: Defining a New Approach to Admissibility, 67 Iowa L.Rev. 879, 911–912 (1982); and Symposium on Science and the Rules of Evidence, 99 F.R.D. 187, 231 (1983) (statement by Margaret Berger). To the extent that they focus on the reliability of evidence as ensured by the scientific validity of its underlying principles, all these versions may well have merit, although we express no opinion regarding any of their particular details.

13 This is not to say that judicial interpretation, as opposed to adjudicative factfinding, does not share basic characteristics of the scientific endeavor: "The work of a judge is in one sense enduring and in another

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ephemeral.... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine." B. Cardozo, The Nature of the Judicial Process 178, 179 (1921).

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Kohls et al v. Ellison et al Doc. 46

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHRISTOPHER KOHLS and MARY FRANSON,

Plaintiffs,

v.

KEITH ELLISON, in his official capacity as Attorney General of Minnesota, and CHAD LARSON, in his official capacity as County Attorney of Douglas County,

Defendants.

Case No. 24-cv-3754 (LMP/DLM)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO EXCLUDE EXPERT TESTIMONY AND DENYING DEFENDANT'S MOTION FOR LEAVE TO FILE AN AMENDED EXPERT DECLARATION

M. Frank Bednarz, **Hamilton Lincoln Law Institute, Chicago, IL**; and Douglas P. Seaton, James V. F. Dickey, and Alexandra K. Howell, **Upper Midwest Law Center, Minnetonka, MN**, for Plaintiffs.

Elizabeth C. Kramer, Peter J. Farrell, Angela Behrens, and Allen C. Barr, **Office of the Minnesota Attorney General, Saint Paul, MN**, for Defendant Keith Ellison, in his official capacity as Attorney General of Minnesota.

Kristin C. Nierengarten and Zachary J. Cronen, **Rupp, Anderson, Squires & Waldspurger, Minneapolis, MN**, for Defendant Chad Larson, in his official capacity as County Attorney of Douglas County.

Plaintiffs Christopher Kohls and Mary Franson (collectively, "Plaintiffs") move to exclude expert declarations offered by Defendant Keith Ellison, in his official capacity as Attorney General of Minnesota ("Attorney General Ellison"), in opposition to Plaintiffs' motion for a preliminary injunction. ECF No. 29. Recognizing errors in one of the declarations, Attorney General Ellison has moved for leave to file an amended declaration

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by that expert. ECF No. 34. For the following reasons, Plaintiffs' motion is granted in part and denied in part, and Attorney General Ellison's motion is denied.

FACTUAL BACKGROUND

Minnesota law prohibits, under certain circumstances, the dissemination of "deepfakes" with the intent to injure a political candidate or influence the result of an election. *See* Minn. Stat. § 609.771. Plaintiffs challenge the statute on First Amendment grounds and seek preliminary injunctive relief prohibiting its enforcement. *See* ECF No. 10.

With his responsive memorandum in opposition to Plaintiffs' preliminary-injunction motion, Attorney General Ellison submitted two expert declarations: one from Jevin West, a Professor at the University of Washington who also serves as the Director of the Center for an Informed Public, an interdisciplinary research center dedicated to studying misinformation in the digital age (ECF No. 24 (the "West Declaration")); and another from Jeff Hancock, Professor of Communication at Stanford University and Director of the Stanford Social Media Lab (ECF No. 23 (the "Hancock Declaration")). The declarations generally offer background about artificial intelligence ("AI"), deepfakes, and the dangers of deepfakes to free speech and democracy. ECF No. 23 ¶¶ 7–32; ECF No. 24 ¶¶ 7–23.

Plaintiffs moved to exclude these declarations, arguing that they are conclusory and contradicted by the experts' prior writings. *See* ECF No. 30 at 9–34. Plaintiffs also alleged that Professor Hancock included fabricated material in his declaration. *Id.* at 4–9. After reviewing Plaintiffs' motion to exclude, Attorney General Ellison's office contacted

Professor Hancock, who subsequently admitted that his declaration inadvertently included citations to two non-existent academic articles, and incorrectly cited the authors of a third article. ECF No. 37 at 3–4. These errors apparently originated from Professor Hancock's use of GPT-4o—a generative AI tool—in drafting his declaration. ECF No. 39 ¶¶ 11, 21. GPT-4o provided Professor Hancock with fake citations to academic articles, which Professor Hancock failed to verify before including them in his declaration. *Id.* ¶¶ 12–14.

In response, Attorney General Ellison candidly acknowledged the fake citations in the Hancock Declaration while asserting that his office had no idea that the Hancock Declaration contained fake, AI-generated citations. ECF No. 38 ¶¶ 4–6. Because the deadline to submit his response to Plaintiffs' preliminary-injunction motion had already elapsed, Attorney General Ellison requested the Court's leave to file an amended Hancock Declaration, citing excusable neglect to allow the late filing. ECF Nos. 34, 37 at 4–5.

Plaintiffs oppose Attorney General Ellison's request to file an amended Hancock Declaration. ECF No. 42. Plaintiffs contend that the "excusable neglect" exception is not available to Attorney General Ellison because the substance of the Hancock Declaration would change and prejudice Plaintiffs. *Id.* at 6–10. Plaintiffs continue to maintain that the fake citations in the Hancock Declaration taint the entirety of Professor Hancock's opinions and render any opinion by him inadmissible. ECF No. 44 at 8–9.

ANALYSIS

"[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Accordingly, courts within this Circuit have noted

that the Federal Rules of Evidence—including Rule 702 and the related *Daubert* analysis—are either relaxed, *Cooke v. Randolph, Neb. City Council*, No. 8:23-cv-249 (JMG), 2023 WL 6519374, at *2 n.3 (D. Neb. Oct. 5, 2023), or inapplicable, *USA Visionary Concepts, LLC v. MR Int'l, LLC*, No. 4:09-cv-874 (DGK), 2009 WL 10672094, at *5 (W.D. Mo. Nov. 17, 2009), at the preliminary-injunction stage. *See also Guntert & Zimmerman Constr. Div., Inc. v. Gomaco Corp.*, No. 20-cv-4007 (CJW/KEM), 2020 WL 6948364, at *1 (N.D. Iowa Oct. 14, 2020) (explaining that affidavits submitted at the preliminary-injunction stage "need not meet the requirements of affidavits under . . . the Federal Rules of Evidence, but the Court may consider the 'competence, personal knowledge and credibility of the affiant' in determining the weight to give the evidence") (citation omitted); *Parks v. City of Charlotte*, No. 3:17-cv-00670-GCM, 2018 WL 4643193, at *4 (W.D.N.C. Sept. 27, 2018) ("[R]ather than making a final determination under Rule 702 and *Daubert* of whether [the proposed experts] qualify as experts for purposes of this trial, the Court will make a less formal review of the affidavits to see if they present the indicia of reliability common to expert testimony.").

Plaintiffs ask the Court to undertake a full *Daubert* analysis of the West and Hancock Declarations, ECF No. 30 at 9–21; ECF No. 42 at 4–8, but because the evidentiary rules at this juncture are "less formal" than at trial, the Court declines to do so. *Camenisch*, 451 U.S. at 395. Rather, the Court will evaluate the "competence, personal knowledge and credibility" of the West and Hancock Declarations. *Gomaco Corp.*, 2020 WL 6948364, at *1. Nevertheless, the line of cases under *Daubert* remain "useful guideposts" for

evaluating the credibility of the experts' opinions. *St. Michael's Media Inc. v. Mayor of Baltimore*, 566 F. Supp. 3d 327, 353–56 (D. Md. 2021).

I. West Declaration

As for the West Declaration, Plaintiffs argue that it is conclusory because it lacks a reliable methodology under *Daubert*. ECF No. 30 at 17–21. But *Daubert* does not apply with full force at the preliminary-injunction stage, *see Camenisch*, 451 U.S. at 395, and the Court is satisfied that the "competence, personal knowledge and credibility" of Professor West's testimony weigh in favor of admitting his declaration at this early stage. *Gomaco Corp.*, 2020 WL 6948364, at *1 (citation omitted) (internal quotation marks omitted). Moreover, as Attorney General Ellison points out, even under *Daubert*, experts may offer more "generalized testimony . . . to educate the factfinder on general principles." Fed. R. Evid. 702 advisory committee's note to 2000 amendment. The West Declaration largely fits this mold,[1] so to the extent that Plaintiffs criticize the declaration as "conclusory" or "generalized," the Court finds that the West Declaration is admissible for the purpose of educating this Court generally on AI, deepfakes, and the psychological and speech-related impacts of deepfakes.

The Court also rejects Plaintiffs' strained argument that the West Declaration contains legal conclusions. ECF No. 30 at 22–25. Although an expert may not testify as

[1] A portion of paragraph 23 of the West Declaration touches on applying Professor West's testimony to the facts of this case. But the majority of that paragraph simply provides background information on the psychological impacts of deepfakes and the impact of deepfakes on the marketplace of ideas, so the Court considers this paragraph for the purpose of obtaining helpful background knowledge on these issues.

to whether "a legal standard has been met," an expert "may offer his opinion as to facts that, if found, would support a conclusion that the legal standard at issue was satisfied." *Scalia v. Reliance Trust Co.*, No. 17-cv-4540 (SRN/ECW), 2021 WL 795270, at *19 (D. Minn. Mar. 2, 2021) (citation omitted). Here, Plaintiffs take issue with the West Declaration's discussion of the shortcomings of counterspeech to respond to deepfakes. But whether counterspeech is effective in combatting deepfakes is not a legal standard; rather, it is a fact relevant to the ultimate legal inquiry here: the First Amendment means-fit analysis. *See* ECF No. 11 at 29–31 (Plaintiffs analyzing the availability of counterspeech within the means-fit analysis of their preliminary-injunction briefing). The West Declaration does not offer an impermissible legal conclusion because nowhere does Professor West testify whether "a legal standard has been met." *Scalia*, 2021 WL 795270, at *19.

Plaintiffs finally argue that the West Declaration contradicts Professor West's 2020 book about misinformation because in that book, Professor West purportedly dismissed the idea of regulating misinformation. ECF No. 30 at 27–30. As an initial matter, this would not justify excluding the West Declaration, as "the factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility," and "[o]nly if the expert's opinion is so fundamentally unsupported that it can offer no assistance to the jury must such testimony be excluded." *Hartley v. Dillard's, Inc.*, 310 F.3d 1054, 1061 (8th Cir. 2002) (citation omitted) (internal quotation marks omitted). As to credibility, the Court gives little weight to Plaintiffs' argument because Professor West's book was written over four

years ago, and it is plausible that in the fast-changing world of AI technology, his expert opinion has evolved in that four-year gap.

Moreover, the Court discerns some selective quotation on Plaintiffs' part. For example, Plaintiffs quote a passage from the book about the regulation of misinformation: "it runs afoul of the First Amendment to the US Constitution, which guarantees freedom of speech." ECF No. 31-7 at 12. But later in the same paragraph—in a passage that Plaintiffs do not quote—Professor West and his co-author recognize that "[f]or a democracy to function properly, a country needs an informed populace with access to reliable information," and concludes that such an argument "could justify governmental regulation of social media." *Id.* This passage alone undermines Plaintiffs' assertion that Professor West's 2020 book categorically dismisses the possibility of regulating misinformation.

In sum, the Court finds that the "competence, personal knowledge and credibility" of the West Declaration weigh in favor of its admissibility at this stage. *Gomaco Corp.*, 2020 WL 6948364, at *1. Plaintiffs' motion to exclude the West Declaration—whether in whole or in part—is therefore denied. The Court will consider the West Declaration in ruling on Plaintiffs' preliminary-injunction motion.

II. Hancock Declaration

The Hancock Declaration is a different matter. Attorney General Ellison concedes that Professor Hancock included citations to two non-existent academic articles and incorrectly cited the authors of a third article. ECF No. 37 at 3–4. Professor Hancock admits that he used GPT-4o to assist him in drafting his declaration but, in reviewing the

declaration, failed to discern that GPT-4o generated fake citations to academic articles. ECF No. 39 ¶¶ 11–14, 21.

The irony. Professor Hancock, a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI—in a case that revolves around the dangers of AI, no less. Professor Hancock offers a detailed explanation of his drafting process to explain precisely how and why these AI-hallucinated citations in his declaration came to be. *Id.* ¶¶ 10–22. And he assures the Court that he stands by the substantive propositions in his declaration, even those that are supported by fake citations. *Id.* ¶ 22. But, at the end of the day, even if the errors were an innocent mistake, and even if the propositions are substantively accurate, the fact remains that Professor Hancock submitted a declaration made under penalty of perjury with fake citations. It is particularly troubling to the Court that Professor Hancock typically validates citations with a reference software when he writes academic articles but did not do so when submitting the Hancock Declaration as part of Minnesota's legal filing. ECF No. 39 ¶ 14. One would expect that greater attention would be paid to a document submitted under penalty of perjury than academic articles. Indeed, the Court would expect greater diligence from attorneys, let alone an expert in AI misinformation at one of the country's most renowned academic institutions.

To be clear, the Court does not fault Professor Hancock for using AI for research purposes. AI, in many ways, has the potential to revolutionize legal practice for the better. *See* Damien Riehl, *AI + MSBA: Building Minnesota's Legal Future*, 81-Oct. Bench & Bar of Minn. 26, 30–31 (2024) (describing the Minnesota State Bar Association's efforts to

explore how AI can improve access to justice and the quality of legal representation). But when attorneys and experts abdicate their independent judgment and critical thinking skills in favor of ready-made, AI-generated answers, the quality of our legal profession and the Court's decisional process suffer.

The Court thus adds its voice to a growing chorus of courts around the country declaring the same message: verify AI-generated content in legal submissions! *See Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 466 (S.D.N.Y. 2023) (sanctioning attorney for including fake, AI-generated legal citations in a filing); *Park v. Kim*, 91 F.4th 610, 614–16 (2d Cir. 2023) (referring attorney for potential discipline for including fake, AI-generated legal citations in a filing); *Kruse v. Karlan*, 692 S.W.3d 43, 53 (Mo. Ct. App. 2024) (dismissing appeal because litigant filed a brief with multiple fake, AI-generated legal citations).

To be sure, Attorney General Ellison maintains that his office had no idea that Professor Hancock's declaration included fake citations, ECF No. 38 ¶¶ 4–6, and counsel for the Attorney General sincerely apologized at oral argument for the unintentional fake citations in the Hancock Declaration. The Court takes Attorney General Ellison at his word and appreciates his candor in rectifying the issue. But Attorney General Ellison's attorneys are reminded that Federal Rule of Civil Procedure 11 imposes a "personal, nondelegable responsibility" to "validate the truth and legal reasonableness of the papers filed" in an action. *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 126–27 (1989). The Court suggests that an "inquiry reasonable under the circumstances," Fed. R. Civ. P. 11(b), may

now require attorneys to ask their witnesses whether they have used AI in drafting their declarations and what they have done to verify any AI-generated content.

The question, then, is what to do about the Hancock Declaration. Attorney General Ellison moves for leave to file an amended version of the Hancock Declaration, ECF No. 34, and argues that the Court may still rely on the amended Hancock Declaration in ruling on Plaintiffs' preliminary-injunction motion. Plaintiffs seem to accept that Professor Hancock is qualified to render an expert opinion on AI and deepfakes, and the Court does not dispute that conclusion. *See* ECF No. 30 at 4 (accepting that Professors Hancock and West "are well-published in their fields"). Nevertheless, Plaintiffs argue that the Hancock Declaration should be excluded in its entirety and that the Court should not consider an amended declaration. ECF No. 44 at 3. The Court agrees.

Professor Hancock's citation to fake, AI-generated sources in his declaration—even with his helpful, thorough, and plausible explanation (ECF No. 39)—shatters his credibility with this Court. At a minimum, expert testimony is supposed to be reliable. Fed. R. Evid. 702; *see also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993) (explaining that expert testimony must be "not only relevant, but reliable"). More fundamentally, signing a declaration under penalty of perjury is not a mere formality; rather, it "alert[s] declarants to the gravity of their undertaking and thereby have a meaningful effect on truth-telling and reliability." *Acosta v. Mezcal, Inc.*, No. 17-cv-0931 (JKB), 2019 WL 2550660, at *2 (D. Md. June 20, 2019); *see also In re World Trade Ctr. Disaster Site Litig.*, 722 F.3d 483, 488 (2d Cir. 2013) (explaining that the "under penalty of perjury" affirmation "impresses upon the declarant the specific punishment to which he or she is subjected for

certifying to false statements"). The Court should be able to trust the "indicia of truthfulness" that declarations made under penalty of perjury carry, but that trust was broken here. *Davenport v. Bd. of Trs. of State Ctr. Comm. Coll. Dist.*, 654 F. Supp. 2d 1073, 1083 (E.D. Cal. 2009).

Moreover, citing to fake sources imposes many harms, including "wasting the opposing party's time and money, the Court's time and resources, and reputational harms to the legal system (to name a few)." *Morgan v. Cmty. Against Violence*, No. 23-cv-353-WPJ/JMR, 2023 WL 6976510, at *8 (D.N.M. Oct. 23, 2023). Courts therefore do not, and should not, "make allowances for a [party] who cites to fake, nonexistent, misleading authorities"—particularly in a document submitted under penalty of perjury. *Dukuray v. Experian Info. Sols.*, 23 Civ. 9043 (AT) (GS), 2024 WL 3812259, at *11 (S.D.N.Y. July 26, 2024) (quoting *Morgan*, 2023 WL 6976510, at *7). The consequences of citing fake, AI-generated sources for attorneys and litigants are steep. *See Mata*, 678 F. Supp. 3d at 466; *Park*, 91 F.4th at 614–16; *Kruse*, 692 S.W.3d at 53. Those consequences should be no different for an expert offering testimony to assist the Court under penalty of perjury.

To be sure, the Court does not believe that Professor Hancock intentionally cited to fake sources, and the Court commends Professor Hancock and Attorney General Ellison for promptly conceding and addressing the errors in the Hancock Declaration. But the Court cannot accept false statements—innocent or not—in an expert's declaration submitted under penalty of perjury. Accordingly, given that the Hancock Declaration's errors undermine its competence and credibility, the Court will exclude consideration of Professor Hancock's expert testimony in deciding Plaintiffs' preliminary-injunction

motion. *Gomaco Corp.*, 2020 WL 6948364, at *1. Because the Court declines to consider Professor Hancock's testimony in deciding Plaintiffs' preliminary-injunction motion, the Court will deny as moot Attorney General Ellison's motion for leave to file an amended Hancock Declaration.

CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion to Exclude Expert Testimony (ECF No. 29) is **GRANTED IN PART AND DENIED IN PART**. The motion is granted as to the Hancock Declaration and denied as to the West Declaration.

2. Defendants' Motion for Leave to File an Amended Expert Declaration (ECF No. 34) is **DENIED AS MOOT**.

Dated: January 10, 2025

s/Laura M. Provinzino
Laura M. Provinzino
United States District Judge

85 Misc.3d 727
Surrogate's Court, New York,
Saratoga County.

In the MATTER OF the Accounting by Susan F. WEBER AS the TRUSTEE OF the MICHAEL S. WEBER TRUST for the benefit of Owen K. Weber under Article Seventh of the Last Will and Testament of Michael S. Weber, Decedent.

File No. 1845-4/B
|
Decided on October 10, 2024

Synopsis

Background: Trustee of trust for the benefit of decedent's son petitioned for judicial settlement of the interim trust account. Son objected, alleging that trustee, who was also decedent's sister and the executrix of decedent's estate, breached her fiduciary duty as trustee with respect to real property in the Bahamas that the trust had received, in kind, from decedent's estate and had eventually sold. A hearing was held on the petition and son's objections.

Holdings: The Surrogate's Court, Jonathan G. Schopf, S., held that:

trustee was not subject to a heightened standard of care because she was not a trustee with special investment skills;

trustee was entitled, at least initially, to be judged by the retained-asset standard, rather than the stricter standard for a trustee's decision to purchase a new investment;

res judicata barred son from challenging trustee's decision to retain and use the Bahamian property during the period up until the estate accounting was approved and judicially settled;

son failed to establish a date on which trustee should have sold the Bahamian property;

son failed to show that trustee breached her fiduciary duty by retaining and using the Bahamian property for leisure purposes;

even if trustee improperly retained and used the Bahamian property for leisure purposes, son failed to establish any damages from trustee's actions;

as a matter of apparent first impression, before the introduction of evidence that has been generated by an artificial-intelligence (AI) product or system, counsel has an affirmative duty to disclose the use of AI, and the evidence sought to be admitted should be subject before admission to a *Frye* hearing; and

trustee was entitled to the commissions she had received from trust during the interim accounting period.

Objections denied; petition granted.

Attorneys and Law Firms

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Opinion

Jonathan G. Schopf, S.

***727** MICHAEL S. WEBER (hereinafter the "Decedent") died a resident of Saratoga County on December 7, 2003, leaving a Last Will ***728** and Testament, dated January 22, 1999, and First Codicil to the Last Will and Testament of Michael S. Weber, dated September 7, 2000 (the "Will"). Petitioner and Decedent's sister, Susan Weber, was named and qualified as the Executrix of the Estate and as Trustee of a certain ****624** Trust for the benefit of Objectant—Decedent's son and Petitioner's nephew, Owen K. Weber. Thereafter, Petitioner acted in her capacity as Executrix of the Estate as well as Trustee of the Trust for the benefit of Objectant, and now seeks to account.

Petitioner filed a Petition for Judicial Settlement of the Interim Account of the Trustee on June 17, 2022, with attachments thereto. Objectant responded by filing objections to the Trust Account on August 18, 2022, alleging, in relevant part, that Petitioner breached her fiduciary duty as Trustee with respect to her retention and use of real property located in Cat Island, the Bahamas (the "Cat Island Property") that

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was received by the trust in-kind from Decedent's estate (the "Estate"). Petitioner filed a supplemental accounting of the Trust ("Supplemental Trust Account"), with schedules attached thereto on June 6, 2023, and an Amended Petition on June 22, 2023. On December 11, 2023, the Petitioner was deposed.

Objectant filed a motion for summary judgment on January 30, 2024, which Petitioner opposed on February 29, 2024. By Decision and Order dated March 27, 2024, Objectant's motion was denied. A hearing was then held on May 8, 2024, May 22, 2024, and June 7, 2024. The Court received voluminous exhibits from both sides [1] , as well as having marked eight (8) Court Exhibits consisting of the original Will and Codicil and supporting affidavits, the accounting at issue, the pleadings and the final decree in the underlying estate.

Prior to the hearing, Objectant submitted a letter request for a bifurcation of the hearing between liability and damages. This issue was discussed on the record prior to commencing the first day's testimony and the request was denied for the reasons stated on the record and pursuant to *Matter of Wellington Trusts*, 41 Misc.3d 1221(A), 2013 WL 5813670 [Surrogate's Court Nassau County 2013].

***729** Post-Hearing proposed findings of fact and conclusions of law were submitted by both Petitioner and Objectant on August 1, 2024. The Court now issues this Decree settling the account.

Scope of the Hearing

The primary issues adjudicated at the hearing and addressed herein include: (A) whether Objectant established that Petitioner breached her fiduciary duty by retaining the Cat Island Property as a Trust asset, in violation of the Prudent Investor Act; (B) whether Objectant established that Petitioner breached her fiduciary duty by traveling to the Cat Island Property during her time as Trustee and whether such travel to the Cat Island Property amounted to a conflict of interest or self-dealing; and (C) whether Objectant suffered damages resulting from Petitioner's alleged breaches of fiduciary duty. All other issues are collateral to those mentioned above.

Discussion

At the outset of the hearing, the parties stipulated that Petitioner met her *prima facie* burden of establishing that the Trust is fully and accurately accounted for, as reflected in the Trust Account. The burden of proof now shifts to Objectant to overcome the *prima facie* accuracy of the Interim Account and prove his objections (*see* ****625** *Matter of Cook*, 177 A.D.3d 1214, 114 N.Y.S.3d 139 [App. Div. 3rd Dept. 2019]; *see also Rudin v. Heimlich*, 34 A.D.3d 371, 824 N.Y.S.2d 637 [App. Div. 1st Dept. 2006]).

I. Breach of Fiduciary Duty in Retention of Cat Island Property

As an initial matter, the Court addresses Objectant's argument that Petitioner is a trustee with "special investment skills" pursuant to EPTL § 11-2.3(b)(6), thereby subjecting her to a heightened standard of care when analyzing the breach of fiduciary duty claims.

To establish that the heightened standard of care applies, Objectant must prove that Petitioner is either a "paid professional investment advisor (whether or not registered under any federal securities or investment law)" or that she otherwise "represent[ed] that [she] has special investment skills ...." (EPTL § 11-2.3(b)(6); *see also In re Est. of Witherill*, 37 A.D.3d 879, 880, 828 N.Y.S.2d 722 [3d Dep't 2007] [applying heightened standard of care to attorney only where trustee was no longer serving as an attorney and had separately held himself out as a "skilled financial advisor and was paid handsomely for such services during decedent's lifetime"]).

***730** At the hearing, it was adduced that Petitioner was never a trust attorney or worked in the investment services field, nor did she hold herself out to possess such specialized skills. In fact, Objectant's own expert witness, Charles Ranson, testified that it was his uncontradicted opinion that Petitioner was "a lay trustee." [2]

The Court finds that Petitioner is, and was, a lay trustee from her inception as Trustee and for the entire period covered by the instant Interim Account and owed Objectant a fiduciary duty as such.

To establish a claim for breach of fiduciary duty against a lay trustee, Objectant holds the burden to prove: (1) the existence of a fiduciary duty by Petitioner, (2) misconduct by Petitioner, and (3) damages directly resulting from Petitioner's misconduct (*see, Massey-Hughes v. Massey*, 200 A.D.3d 1684, 1687, 161 N.Y.S.3d 589 [4th Dep't 2021]).

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The first element having already been met and addressed in the affirmative; the Court must now analyze the second element of misconduct. More specifically, Objectant's allegations (1) that the protections afforded by the so-called "retained asset standard" do not apply to the analysis of whether Petitioner acted prudently in retaining the Cat Island Property; (2) the date on which Objectant maintains Petitioner should have sold the Cat Island Property; and (3) whether Petitioner's decision to travel to the Cat Island Property influenced improperly her decision to retain it.

Regarding the so-called "retained asset standard", courts have clarified that a trustee's decision to retain property received in-kind to a trust should be afforded more leniency than a trustee's decision to purchase a new investment (see *In re JP Morgan Chase Bank, N.A.*, 133 A.D.3d 1292, 20 N.Y.S.3d 499 [4th Dep't 2015] ["Indeed, it is well established that retention of securities received from the creator of the trust may be found to be prudent even when purchase of the same securities might not." [internal quotation marks and citation omitted]).

The Objectant's position is that the retained asset standard does not apply because the Trust's retention and use of ****626** the Cat Island Property was "imprudent on its face" and that Petitioner relied on sentimental reasons in its retention. Although Petitioner admitted that she retained the Cat Island Property, ***731** at least in part, due to sentimental reasons, that does not end the analysis. The Objectant needs to prove that the retention and use was misconduct and that such misconduct resulted in damages to the Trust and/or its beneficiary. In his post-hearing submission, the Objectant does not cite to any caselaw or evidentiary facts to support his contention that the retention of the Cat Island Property was "imprudent on its face." For the reasons discussed herein, the Court cannot find that the retention and use is "imprudent on its face" [3] as Objectant failed to demonstrate that some other investment standard or product would have been reasonable at the time the Trustee/Petitioner made the decision [4] to retain the asset.

The Will expressly instructed the Estate fiduciary to transfer the residuary of the Estate, including real property, into the Trust. At the outset, the Accounting reflects that the Cat Island Property represented approximately sixteen percent (16%) of the principal received by the Trust from the Estate. While Mr. Ranson testified that any concentration over ten percent (10%) would be imprudent, for reasons explained *infra*, the Court does not credit this portion of his testimony. [5]

The evidence at the hearing, specifically, the undisputed calculations contained within the Accounting at issue demonstrated that the Trust was able to meet its obligations to Objectant throughout the relevant time period, whereby the Trustee distributed $1,116,668.23 to the Objectant for his use and benefit [6] and that the retention of the Cat Island Property had no impact on the provision of financial support to Objectant. [7]

***732** Given the above, the Court finds that, at least initially, Petitioner is entitled to the benefit of the retained asset standard (*See, In re JP Morgan Chase Bank, N.A.*, 133 A.D.3d 1292, 1298, 20 N.Y.S.3d 499 [4th Dep't 2015] ["retention of securities received from the creator of the trust may be found to be prudent even when purchase of the same securities might not"]).

During his testimony, Objectant's expert witness, Mr. Ranson, maintained that the Cat Island Property should have been sold in 2004 while it was an asset of the Estate. When questioned by Petitioner's counsel regarding the undisputed fact that the Cat ****627** Island Property was an estate asset in 2004, Mr. Ranson stated he was going off the Accounting and that it could have been sold as an estate asset, or at least immediately upon being received by the Trust. [8]

The Estate Accounting was approved and judicially settled on January 25, 2008. Accordingly, Petitioner's decision to retain the Cat Island Property in her capacity as Executrix from 2004 through either January 25, 2008 (the date of the Settlement Decree) or April 4, 2008 (the date of the actual Deed), is not properly before the Court in this proceeding and Objectant is barred *res judicata* from challenging that decision (*In re Rudin*, 34 A.D.3d 371, 372, 824 N.Y.S.2d 637 [1st Dep't 2006]).

Thus, the relevant period to evaluate Objectant's challenges to Petitioner's actions regarding the Cat Island Property is from either January 25, 2008 (the date of the Decree in the estate), or April 4, 2008, until the Property was sold on January 14, 2022, for Four Hundred Eighty-Five Thousand Dollars ($485,000.00). For purposes of this decision, the Court finds that the January 25, 2008 date of the final estate decree should control as to when the Trust had constructive legal authority and financial responsibility for the Cat Island Property, regardless of its date of actual transfer.

As to the salability of the Cat Island Property, Petitioner's counsel objected to Mr. Ranson's ability to opine on real estate matters; specifically, on whether the Cat Island Property was improperly retained as he had no relevant real estate expertise. Objectant's counsel argued that Mr. Ranson's testimony would ***733** be that the real property should have been sold and "invested in mutual funds or securities" — in other words, discussing asset classes rather than real estate specifics. The Court reserved on Petitioner's Objection, permitted the testimony, and now addresses it herein.

Mr. Ranson was not admitted as an expert in real estate and its value and Objectant offered no such expert testimony, such as to other Cat Island home sales, rental rates, market conditions, or adequacy of the sales price. Therefore, Petitioner's objection to Mr. Ranson's testimony is overruled, and the Court will consider the same.

Mr. Ranson's testimony that the Cat Island Property should have been sold immediately in 2004, or at least immediately upon receipt by the Trust, is entirely speculative. This is evidenced by Mr. Ranson's admissions that he did not consider any historic market data or other information relating to the real estate market or valuation of houses on Cat Island, including the 2008-2009 global financial crisis or the COVID-19 pandemic.[9] Further, despite Mr. Ranson's testimony regarding his personal familiarity with the Bahamian islands, he has no expertise in real estate dealings from which he could opine on if market conditions could have facilitated such a sale of the Cat Island Property prior to 2022. In addition, he was unable to testify as to the fundamentals of living on the island, the rental season, the market value of Cat Island rental properties, or ****628** anything specific in valuing the Cat Island Property. In contrast, Petitioner visited the island annually for many years and testified as to her efforts to market the property and the difficulties involved therewith.[10] The Court may therefore reject any such portions of Mr. Ranson's testimony (*Montesione v. Newell Rubbermaid, Inc.*, 192 A.D.3d 680, 682, 139 N.Y.S.3d 848 [2d Dep't 2021] ["expert's opinion not based on facts is worthless" [internal citation omitted]). Given the above, the Objectant failed to prove the date by which the Cat Island Property should have been sold, or even that it could have been sold prior to 2022.

There was also conflicting evidence regarding the Trust's date of acquisition of the Cat Island Property. As noted by the ***734** Court in its March 27, 2024 Decision and Order, the decedent's estate was judicially settled by Decree dated January 25, 2008. Introduced at the hearing was a Deed from the Estate to the Trust dated April 4, 2008. The Court further notes that the Accounting reflects an apparent 2004 inventory date for the Cat Island Property along with numerous transactions and expenses relating thereto that pre-date 2008. The parties stipulated to the accuracy of the accounting and as set forth above, the Court finds that the January 25, 2008 date controls.[11]

Objectant contends that Petitioner's desire to travel to the Cat Island Property also improperly influenced her decision to retain it as a Trust asset. Petitioner admitted that she wanted her trips to the Cat Island Property to be a vacation for her as well; however, her testimony also qualified that position in that she had only a set amount of vacation each year, as trustee she was obligated to oversee the Cat Island Property, and that she would have rather gone to Jamaica or the Virgin Islands for vacation. Although the Court has reservations and questions the Petitioner's credibility concerning her leisure use of the Cat Island Property, under the totality of the evidence presented the Court cannot find that Petitioner's travel plans standing alone improperly influenced her retention of the Cat Island Property.

As discussed in further detail below, even if the Court had found Petitioner breached her fiduciary duty in this regard, the Court finds that the Objectant has failed to prove any damages.

II. Breach of Fiduciary Duty in Travel to Cat Island Property

Objectant also contends that Petitioner's travel to and use of the Cat Island Property was a breach of her duties in that it was used primarily for personal use rather than for Trust business. To avoid a conflict of interest or self-dealing, a trustee "must refrain from placing himself in a position where his personal interest or that of a third person does or may conflict with the interest of the beneficiaries" (*Matter of Rothko's Est.*, 43 N.Y.2d 305, 318, 401 N.Y.S.2d 449, 372 N.E.2d 291 [1977] [internal citation omitted]).

At the hearing, Petitioner freely admitted that she intended her trips to the Cat Island Property to be for both trust business and personal use with a vacation component. Petitioner testified that her partner ****629** usually traveled with her, and on at ***735** least one (1) occasion a friend also visited with her. It is undisputed that Petitioner did not compensate the Trust for her usage of the Cat Island Property and that

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the Trust paid for Petitioner's travel to and from Cat Island. Petitioner's uncontested testimony was that her partner's and guests' travel were paid for by those individuals and not the Trust.

Notwithstanding the above, Petitioner also testified that the primary purpose of her trips to Cat Island were for Trust business. Petitioner testified that while on Cat Island, she would meet with property managers, make and/or oversee certain repairs to the Property, and do general upkeep. She further elaborated that her partner and her guests would also assist in the physical maintenance of the Cat Island Property. Petitioner testified that work benefitting the Trust comprised at least fifty percent (50%) of her time spent on Cat Island, with the remainder being for personal vacation. Petitioner also testified that she would intentionally travel to the Cat Island Property during the peak season so that she could enjoy her time there as well, and that on the years she traveled to Cat Island, she stayed between one (1) and three (3) weeks, presumably during which time the property was not generating rental income.

The Court finds that once per year trips to the Cat Island Property for Trust business would be entirely reasonable given Petitioner's fiduciary duties to manage the Trust assets (*Matter of Est. of Kenney*, 64 Misc.3d 1232(A), 117 N.Y.S.3d 800 at *5 [N.Y. Sur. 2019]). However, the analysis does not end there, given the mixed-use nature of the trips. To this point, Mr. Ranson testified that a trustee's *de minimus* use of a Trust vacation asset is allowable without compensating the Trust. He further opined when asked to give an example of *de minimus* use that the use of a vacation property for Trust business for two days out of a three or four day trip (approximately 33% to 50%) would be *de minimus*. It should be noted that 50% was the length of time that Petitioner testified she used for personal vacation on the property.

The Court recognizes that Petitioner's extended stays at the Cat Island Property were potentially inappropriate, especially in light of some portions of her testimony. [12] Unfortunately, no evidence was elicited at the hearing that would allow the Court ***736** to render such a finding as a matter of law. The record contains no actual travel dates of Petitioner that would indicate the length of stay on Cat Island, nor does it contain details, such as a contemporaneous log of work, receipts, or plans which would evince the work Petitioner performed during those stays. Indeed, as noted, Objectant's own expert testified on direct examination that the 50% use was reasonable, and such testimony was uncontroverted. As such, the Court is constrained to deny Objectant's allegations that Petitioner breached her fiduciary duties during her trips to the Cat Island Property.

Were the Court able to find that all or some of Petitioner's use of the Cat Island Property was inappropriate, the record is likewise inadequate to establish any damages. Although Petitioner testified vaguely to a range of one thousand dollars ($1,000.00) to fifteen hundred dollars ($1,500.00), no evidence was introduced as to the actual weekly rental rate for the Cat Island Property during the periods of her ****630** use. There was also no evidence submitted as to what dates the Cat Island Property was rented to third parties, the dates of Petitioner's time there, or even that Petitioner's peak season stays prevented income to the Trust from a potential renter. On the record before it, the Court cannot accurately determine the scope of Petitioner's mix of personal and business use of the Cat Island Property, that the same was inappropriate, nor can it establish any accurate measure of damages to attribute to a potential finding.

III. Testimony of Charles Ranson and Damages Calculations

Objectant argues that in evaluating the Cat Island Property, the correct formula for damages is the "lost profit" standard due to the Petitioner's breach of fiduciary duties — in this case, the value of the sale proceeds of the Cat Island Property had it been sold and the proceeds reinvested in traditional securities. Petitioner argues for the "lost capital" standard — in this case, the difference between the total cost of the Cat Island Property and the final net sales price. Both parties cite to *Matter of Est. of Janes*, 90 N.Y.2d 41, 659 N.Y.S.2d 165, 681 N.E.2d 332 (1997) and *Matter of Rothko's Est.*, 43 N.Y.2d 305, 401 N.Y.S.2d 449, 372 N.E.2d 291 (1977) in support of their positions.

As outlined above, the Objectant failed to prove that Petitioner breached her fiduciary duties, and as such, damages calculations are not necessary. [13] However, assuming arguendo, that the Court could find some level of breach of fiduciary duty, ***737** under these facts, it would not rise to the level of conflict of interest and intentional self-dealing as examined in *Rothko* [14], *supra*, and its progeny. As such, any damages calculations with regard to the Cat Island Property would properly be analyzed under the lost capital/profit standard and the Accounting, as submitted on its face, clearly proves that as a result of the sale of the Cat Island

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Property, there was no attributable loss of capital — in fact, it generated an overall profit to the Trust.

Objectant also relied upon Mr. Ranson in offering proof of damages due to the retention of the Cat Island Property. Mr. Ranson prepared a "Preliminary Expert Report of Charles W. Ranson" dated December 14, 2022 which was admitted into evidence over objection as Respondent's Exhibit "F1". Mid-hearing he also prepared what is referred to as a "Supplemental Damages Report" dated May 28, 2024 that was admitted into evidence over objection as Respondent's Exhibit "K".

The Court finds several aspects of Mr. Ranson's testimony and reports lacking. In addition to citing an outdated version of the Prudent Investor Act, Mr. Ranson admitted that he was not aware of—and thus did not consider—the differences between lost capital and lost profit damages calculations. [15] The reports and testimony make clear that Mr. Ranson's damages analysis were also calculated from a start date of ****631** December 31, 2004, which as set forth above, is more than three (3) years too early.

Mr. Ranson's initial report contains deficiencies that were not rehabilitated by his testimony. For instance, in the table on page five (5) of the report, Mr. Ranson did not factor in expenses which must have been incurred by the Trust such as real estate taxes in years 2004 through 2013 [16], 2016, 2017, and 2020. The report fails to factor in the effect of the COVID-19 pandemic on the rental income in 2020 and 2021. In his report, Mr. Ranson asserts vague references to the economic conditions of the island ***738** which were solely supported by reference to a hearsay conversation he had on the telephone with one Robin Brownrigg.

The report states that the Cat Island Property resulted in an accumulated net operating loss of $149,643.92 [17]. Coupled with the failure to account for real estate taxes, Mr. Ranson's report sets forth calculations encompass years that the property was not yet owned by the Trust (2004-2008). Another example of unreliability is that in Mr. Ranson's chart analysis of Asset Classes on page four (4) of his report, it appears that he failed to take into account the distributions to the Objectant in each year, which would naturally have an effect on the percentage of value assigned to the traditionally invested assets and cash. He refers to the property as being "illiquid", and while he does reference that the property sold in 2022 for $485,000.00 resulting in a reinvestment of the sales proceeds of $323,721.68, this reinvestment is not reflected in the chart on page four (4) in any discernable mathematical fashion other than as a footnote. The chart reflects a total year end market value on December 31, 2021 of $872,322.07 and a total year-to-date market value on April 30, 2022 of $843,727.27. If the Cat Island Property was sold and reinvested, either this value was not added into the chart or distributions to Objectant were not factored in, or perhaps there was some other unknown factor which would require speculation on part of the Court. The Court declines to engage in speculation as to what the year-to-date market value was on April 30, 2022, and instead finds Mr. Ranson's calculations contained within the initial report to be inherently unreliable.

Mr. Ranson makes the conclusion in his report that the "Trustee's decision to retain, and subsequent management of the Cat Island Property did not enable the Trustee to make appropriate present and future distributions to or for the benefit of the Beneficiary ...." This is squarely refuted by the accounting itself which reveals that the Objectant was provided with direct ***739** distributions of cash as well as payments for his benefit in the sum of $1,116,668.23, leaving a principle balance of $857,471.43 on hand as of the conclusion of the accounting period. Indeed, at the time the hearing concluded on June 7, 2024, the Objectant was slated to receive a future non-discretionary distribution from the Trust of approximately $175,000.00 on XX ****632** XX, 2024, when he attained the age of forty (40) [18]. As such, all past [19] and, due to the timing of this hearing, even a future distribution was realized. Mr. Ranson's Supplemental Damages Report also failed to account for any tax deductions or write-offs that the trust benefited from relating to the Cat Island Property. Mr. Ranson also admits that he made certain assumptions of closing costs for the hypothetical sale of the Cat Island Property at its book value to arrive at the $250,000 starting figure. [20] Despite Mr. Ranson making assumptions regarding a *hypothetical* sale in 2004, it is troubling that his Supplemental Damages Report failed to account for the proceeds from the *actual* sale of the Cat Island Property for $485,000 in 2022.

Perhaps even more troubling is that Mr. Ranson further testified that he used a proxy investment account — the Vanguard Balanced Index Fund — to estimate the hypothetical investment performance of the hypothetical 2004 sales proceeds in his Supplemental Damages Report [21]. This is despite Mr. Ranson testifying that the appropriate calculations ***740** would have required a full A.M.R. analysis, which he testified is the industry standard, and that

this was not done because it was too costly, a statement that would normally end the Court's inquiry as to the reliability of an expert's analysis[22]. In fact, Mr. Ranson testified that an industry compliant A.M.R. analysis would have required combing through the approximately two hundred sixteen (216[23]) investment statements from the Trust's ****633** investment firm to obtain, at least in part, asset cost basis, dividends, interest, and compare with cash flow. The report also appears not to account for taxes or index fund management fees in its calculations; instead relying upon the raw percentage of fund value increase over the time-period.

Based on the uncontroverted evidence, the Court finds that Mr. Ranson's calculations and specifically those with regards to damages are inherently unreliable, are based on speculation, hypothetical market performance, and are unsupported or outright contradict by facts in the record (*See Montesione*, 192 A.D.3d at 682, 139 N.Y.S.3d 848; *see also Williams v. J.P. Morgan & Co.*, 199 F. Supp. 2d 189, 195 [S.D.N.Y. 2002] [discussing *Janes* and concluding that "the measure of appreciation damages for a wrongfully retained asset is too speculative. To grant them, a court would be forced to generate and assign real-world value to the hypothetically reinvested proceeds from the asset."]).

In conclusion, Mr. Ranson's damages calculations cannot be credited as they are unreliable.[24] Whether or not he was retained and/ or qualified as a damages expert in areas other than fiduciary duties, his testimony shows that he admittedly did not perform a full analysis of the problem, utilized an incorrect time period for damages, and failed to consider obvious ***741** elements into his calculations, all of which go against the weight and credibility of his opinion.

Use of Artificial Intelligence

Although the Court has found his testimony and opinion not credible based upon the discussion above, a portion of his testimony bears further and separate discussion as it relates to an emerging issue that trial courts are beginning to grapple with and for which it does not appear that a bright-line rule exists.

Specifically, the testimony revealed that Mr. Ranson relied on Microsoft Copilot, a large language model generative artificial intelligence chatbot, in cross-checking his calculations. Despite his reliance on artificial intelligence, Mr. Ranson could not recall what input or prompt he used to assist him with the Supplemental Damages Report. He also could not state what sources Copilot relied upon and could not explain any details about how Copilot works or how it arrives at a given output. There was no testimony on whether these Copilot calculations considered any fund fees or tax implications.

The Court has no objective understanding as to how Copilot works, and none was elicited as part of the testimony. To illustrate the concern with this, the Court entered the following prompt into Microsoft Copilot on its Unified Court System (UCS) issued computer: "Can you calculate the value of $250,000 invested in the Vanguard Balanced Index Fund from December 31, 2004 through January 31, 2021?" and it returned a value of $949,070.97 — a number different than Mr. Ranson's. Upon running this same query on two (2) additional UCS computers, it returned values of $948,209.63 and a little more than $951,000.00, respectively. While these resulting variations are not large, the fact there are variations at all calls into question the reliability and accuracy of Copilot to generate evidence to be relied upon in a court proceeding.

Interestingly, when asked the following question: "are you accurate", Copilot generated the following answer: "I aim to be ****634** accurate within the data I've been trained on and the information I can find for you. That said, my accuracy is only as good as my sources[25] so for critical matters, it's always wise to verify.

***742** When asked "are you reliable", Copilot responded with: "[y]ou bet. When it comes to providing information and engaging in conversation, I do my best to be as reliable as possible. However, I'm also programmed to advise checking with experts for critical issues. Always good to have a second opinion!" When the follow-up question of "are your calculations reliable enough for use in court" was asked, Copilot responded with "[w]hen it comes to legal matters, any calculations or data need to meet strict standards. I can provide accurate info, but it should always be verified by experts and accompanied by professional evaluations before being used in court ..."

It would seem that even Copilot itself self-checks and relies on human oversight and analysis. It is clear from these responses that the developers of the Copilot program recognize the need for its supervision by a trained human operator to verify the accuracy of the submitted information as well as the output.

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Mr. Ranson was adamant in his testimony that the use of Copilot or other artificial intelligence tools, for drafting expert reports is generally accepted in the field of fiduciary services and represents the future of analysis of fiduciary decisions; however, he could not name any publications regarding its use or any other sources to confirm that it is a generally accepted methodology.

It has long been the law that New York State follows the *Frye* standard for scientific evidence and expert testimony, in that the same is required to be generally accepted in its relevant field (*see Frye v. United States*, 293 F. 1013 [D.C. Cir. 1923]).

The use of artificial intelligence is a rapidly growing reality across many industries. The mere fact that artificial intelligence has played a role, which continues to expand in our everyday lives, does not make the results generated by artificial intelligence admissible in Court. Recent decisions show that Courts have recognized that due process issues can arise when decisions are made by a software program, rather than by, or at the direction of, the analyst, especially in the use of cutting-edge technology (*People v. Wakefield,* 175 A.D.3d 158, 107 N.Y.S.3d 487 [3d Dept. 2019]). The Court of Appeals has found that certain industry specific artificial intelligence technology is generally accepted (*People v. Wakefield*, 38 N.Y.3d 367, 174 N.Y.S.3d 312, 195 N.E.3d 19 [2022] [allowing artificial intelligence assisted software analysis of DNA in a criminal case]). However, *Wakefield* involved a full *Frye hearing* that included expert testimony that explained the mathematical ***743** formulas, the processes involved, and the peer-reviewed published articles in scientific journals. In the instant case, the record is devoid of any evidence as to the reliability of Microsoft Copilot in general, let alone as it relates to how it was applied here. Without more, the Court cannot blindly accept as accurate, calculations which are performed by artificial intelligence. As such, the Court makes the following findings with regard to the use of artificial intelligence in evidence sought to be admitted.

****635** In reviewing cases and court practice rules from across the country, the Court finds that "Artificial Intelligence" ("A.I.") is properly defined as being any technology that uses machine learning, natural language processing, or any other computational mechanism to simulate human intelligence, including document generation, evidence creation or analysis, and legal research, and/or the capability of computer systems or algorithms to imitate intelligent human behavior. The Court further finds that A.I. can be either generative or assistive in nature. The Court defines "Generative Artificial Intelligence" or "Generative A.I." as artificial intelligence that is capable of generating new content (such as images or text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples. A.I. assistive materials are any document or evidence prepared with the assistance of AI technologies, but not solely generated thereby.

In what may be an issue of first impression, at least in Surrogate's Court practice, this Court holds that due to the nature of the rapid evolution of artificial intelligence and its inherent reliability issues that prior to evidence being introduced which has been generated by an artificial intelligence product or system, counsel has an affirmative duty to disclose the use of artificial intelligence and the evidence sought to be admitted should properly be subject to a *Frye* hearing prior to its admission, the scope of which should be determined by the Court, either in a pre-trial hearing or at the time the evidence is offered [26].

***744 Trustee Commissions**

The Account filed by Petitioner reflects more than One Hundred Eight Thousand Four Hundred Dollars and 00/100 ($108,400.00) in commissions taken during the relevant accounting period. The unchallenged testimony of the Petitioner was that she never charged the Trust for any of the upkeep and repair work (other than supplies) she personally undertook regarding the Cat Island Property and received only statutory commissions [27].

Objectant has not challenged the reasonableness of the amount of the paid trustee commissions, rather he seeks disgorgement based upon the allegations of misconduct. As discussed at length above, the Court was unable to find that Petitioner breached any fiduciary duties in this matter. Therefore, the Court will allow the commissions as set forth in Petitioner's Account.

Accordingly, it is therefore,

ORDERED, ADJUDGED, AND DECREED based upon all of the foregoing, that the Objectant's Objections are hereby denied in their entirety; and it is further

ORDERED, ADJUDGED, AND DECREED based upon all of the foregoing, that Petition for Intermediate Accounting is granted in all respects; and it is further

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ORDERED, ADJUDGED, AND DECREED that any remaining claims not specifically addressed herein are denied; and it is further

****636 ORDERED, ADJUDGED, AND DECREED** that counsel for both parties shall submit requests for attorneys fees within thirty (30) days of the issuance of this Decision and Order; and it is further,

ORDERED, ADJUDGED, AND DECREED that Petitioner's counsel shall submit a proposed Decree within thirty (30) days from the issuance of this Decision and Order.

All Citations

85 Misc.3d 727, 220 N.Y.S.3d 620, 2024 N.Y. Slip Op. 24258

Footnotes

1 Petitioner's counsel in conformance with this Court's Local Rules stipulated to the admission of various exhibits pre-hearing. In an apparent strategic move after the exchange of pre-hearing briefings, on the first day of the hearing in an off the record discussion, counsel for Petitioner walked back that stipulation, all to the surprise of Objectant's counsel. Ultimately the exhibits at issue were offered and received, but as a matter of courteous practice the Court would caution counsel to abide by their pre-hearing stipulations.

2 The Court notes that Mr. Ranson was present via Microsoft Teams for the entirety of all three (3) hearing days prior to giving his testimony.

3 In as far as the Court can determine, this is not a legal standard. Based on the lack of evidence in the record, the Court declines to create a new legal standard as to a lay trustee's duties and obligations.

4 There is no conclusive proof in the record which would establish when this decision was made or should have been made. It would appear to have been a continuously evolving thought process and decision until the Trustee decided to liquidate the property in 2022.

5 The Court also notes that Mr. Ranson cited to an outdated version of New York's Prudent Investor Act to support this proposition, further calling into question his credibility.

6 It should be noted that the Trust was a “discretionary trust” which allowed the Trustee to use her own discretion in making or not making distributions to the Objectant. Examples of distributions over the years of the accounting period include but are not limited to: various stipends, medical services, support payments to third parties, housing, a vehicle, and tuition.

7 At the end of the Trust accounting period, the Amended Account reflects a total balance of $857,471.43 on hand. When asked on cross-examination what became of a $319,000.00 distribution, the Objectant testified in sum that he attempted to start a business, had drug addiction, and “I blew — blew that money.”

8 Mr. Ranson maintained this position notwithstanding the fact that he was present for the entirety of the hearing prior to offering his testimony where it was disclosed that the property was not a trust asset until 2008 as supported by the closing Decree of the estate and the deed transferring title to the property.

9 This lack of analysis comports with the fact that Mr. Ranson is not qualified as an expert in real estate.

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10 Petitioner also testified about her 2019 proposal to liquidate all Trust assets, including the Cat Island Property, and purchase an annuity for Objectant, which, per Petitioner, would have produced a steady income stream; a plan ultimately not agreed to by Objectant.

11 In any event, as Objectant failed to meet his evidentiary burden to establish that the Cat Island Property could have been sold prior to the 2022 sale date, the Trust's date of acquisition is moot.

12 Petitioner testified that part of her reason for being on Cat Island "was to establish our presence as Cat Island owners ... with neighbors" and that she probably could have shortened her trips to only a few days if kept "strictly business."

13 "[L]iability for a trustee's negligent retention of stock requires not only a showing of imprudence *but proper proof of damages.* It is clear that in order to establish what these damages are an objectant must prove at trial the time when the trustee should have sold the shares" (*Matter of Wellington Trs.*, 41 Misc.3d 1221[A], 2013 WL 5824453 [2013 Nassau Sur. Ct.] [internal citations omitted] [emphasis added]).

14 The fiduciaries in *Rothko* were found to have self-dealt by selling paintings worth millions of dollars to entities they controlled, including transferring paintings in violation of a temporary restraining order and a later injunction order.

15 Presumably, an expert on damages would be well-versed in both calculation models.

16 The Trust did not own the property until 2008.

17 Per Mr. Ranson's calculations, in 2008-2009 the Trust lost $166,271.17 out of the traditionally invested assets presumably due to the market forces of the then global financial crisis that was touched on during testimony at the hearing. This is a sum greater than Mr. Ranson claims was a result of the Trustee retaining the property, yet he conceded the traditionally invested assets were prudent. Likewise, his calculations show the investment portfolio in total gained $189,431.61 from 2005 to April 30, 2022. By the Court's calculations using Mr. Ranson's report, the property generated a net profit of $174,077.76 over the same time frame due to its retention and sale.

18 Post-Hearing, on June 24, 2024, upon due application, this Court approved a partial assignment of that distribution ($70,000.00) in order to pay for the Objectant's incurred legal fees of $33,914.93 and the fee for Mr. Ranson of $25,117.50 with the balance to be a retainer for future legal fees.

19 Objectant did not dispute the sufficiency of the past discretionary distributions by Trustee and conceded during the proceedings of this accounting that the traditionally invested assets were prudently managed, a point on which Mr. Ranson agreed in his initial report. The Trustee has even consented to the Trust distributions for all of Objectants legal fees and disbursements.

20 The Court notes again, that Mr. Ranson is not qualified as an expert in real estate and offered no basis for his closing cost assumptions. Indeed, these cost calculations differed substantially from those actually incurred by the Trust upon the sale of the property, which were reflected on the closing statement from the sale. The closing costs on the closing statement were $38,070.00 vs. the $20,000.00 estimated in the report. The error in not knowing the customary costs of a real estate transaction alone is reflective of his lack of expertise on transactions involving Bahamian property.

21 A more proper comparison would have been an analysis of the profit and loss by performing a calculation using the fund(s) that the traditionally invested assets of the trust were invested in during the relevant time-period. The use of the VBINX fund is entirely speculative as it assumes this is the fund that the Trustee would have selected.

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22 The Court is puzzled by the statement that the AMR analysis would have been too costly considering that Mr. Ranson states on page two (2) of his initial report he analyzed the investor's annual statements over the eighteen (18) year period reflected in his report. Indeed, based upon the documents filed in this proceeding, Mr. Ranson was paid at least $35,092.50 and perhaps as much as $50,092.50. His hourly rate, not counting the lower billed rate of his research assistant, is $770.00, resulting in between 45 and 65 hours of work resulting in a six (6) page preliminary report and one (1) page supplemental along with his appearance at the hearing via MS Teams. It is also noted that although other requests for disbursement of fees and expenses were asked to be ordered by the Court, no request was made for authorization of the disbursement of Trust funds to conduct this analysis.

23 Eighteen years (216/12=18), which again, Mr. Ranson stated he'd already analyzed in his initial report.

24 The court has also considered Mr. Ranson's “Preliminary Expert Report”, which his testimony failed to cure the hearsay and other reliability issues contained within, and declines to credit the same.

25 This brings to mind the old adage, “garbage in, garbage out”. Clearly a user of Copilot and other artificial intelligence software must be trained or have knowledge of the appropriate inputs to ensure the most accurate results.

26 As an example of how emerging these issues are, on August 7, 2024, the New York City Bar Association issued an ethics opinion (2024-5) on the use of artificial intelligence by attorneys in general. https://www.nycbar.org/wp-content/uploads/2024/08/20221329_GenerativeAILawPractice.pdf. The Court references this opinion purely for informational purposes, the Court is not in any way suggesting that any witness or counsel in this matter was unethical.

27 Petitioner testified at her deposition that she had no receipts for supplies and work.

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2025 WL 2613764 (Cal.Super.) (Trial Order)
Superior Court of California,
Rene C. Davidson Courthouse.
Alameda County

Ariel MENDONES, et al., Plaintiff, et al.,
v.
CUSHMAN AND WAKEFIELD, INC., et al., Defendant, et al.

No. 23CV028772.
September 9, 2025.

Order re Terminating Sanctions

Mark L. Dawson, Dawson Law Offices, Inc., mdawson@dawsonlawoffices.com.

Victoria Kolakowski, Judge.

***1** The order to show cause why terminating sanctions should not issue against Plaintiffs Ariel and Maridol Mendones for intentionally submitting false testimony to the Court in connection with their motion for summary judgment and Plaintiffs not referred to the Alameda County District Attorney's Office for criminal prosecution came on for hearing on September 9, 2025, at 2:30 p.m. The Court issued a tentative ruling, which Plaintiffs contested. Plaintiffs did not appear at the hearing and were not excused from appearing. Defendants' counsel appeared. As the contesting party was not present, the Court affirms its tentative ruling and issues a terminating sanction against Plaintiffs for intentionally submitting false evidence to the Court in connection with their motion for summary judgment.

I. BACKGROUND

On March 11, 2025, Plaintiffs moved for summary judgment in this action. In support, Plaintiffs provided several documents as exhibits. Upon review, the Court suspected Plaintiffs' exhibits 3, 6A, 6B, 6C, 7, 21, 27, 35, and 40 of having been altered or created by generative artificial intelligence (GenAI). For instance, exhibits 6A, 6C, and 36 purport to capture the speech and image of Geri Haas. But, while exhibit 36 appears to capture a real-life interaction, certain characteristics of exhibits 6A and 6C, such as the lack of facial expressions, the looping video feed, among other things, suggested that these exhibits were products of GenAI—i.e., “deepfakes.”

On June 11, 2025, the Court issued a tentative ruling in connection with a case management conference, indicating its intent to issue an order to show cause with a hearing on July 8, 2025. At the hearing on June 12, 2025, the Court's suspicion was reinforced when Maridol Mendones mentioned that some witnesses depicted in the suspect evidentiary submissions were deceased or could not be contacted by her. Maridol Mendones asked for the Court to set the hearing on the order to show cause in August 2025 to accommodate her and permit her time to seek legal counsel.

On July 11, 2025, the Court issued the order to show cause why terminating sanctions should not issue against Plaintiffs for intentionally submitting false testimony to the Court in connection with their motion for summary judgment and Plaintiffs not referred to the Alameda County District Attorney's Office for criminal prosecution. The Court restates the relevant portions of that order:

> The Court issues an order to show cause why terminating sanctions should not issue against Plaintiffs for intentionally submitting false testimony to the Court in connection with their motion for summary

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judgment and Plaintiffs not referred to the Alameda County District Attorney's Office for criminal prosecution.

The Court notes that some of the purported testimony submitted by Plaintiffs appears to be products of generative artificial intelligence. (*Compare* Pls.' Mot. Summ. J. Ex. 36 (capturing speech and image of Geri Haas), *with* Exs. 6A & 6C (purporting to capture speech and image Geri Haas); *see also* Exs. 3, 6B, 6C, 7, 21, 27, 35, 40.) The Court is also suspicious of the authenticity of other evidentiary submissions.

***2** The Court is attentive to the issue of improper use of generative AI before it. (*See, e.g., Evans v. Execushield, Inc.* (Cal. Super. Ct. Mar. 10, 2025) 2025 WL 893084 (discussing the presentation of fake citations to the court by attorneys).) The Court is also attentive to the use of generative AI to create videos. (*See, e.g.*, Jess Weatherbed, Judge berates AI entrepreneur for using a generated 'lawyer' in court, The Verge, Apr. 10, 2025, https://www.theverge.com/news/646372/ai-lawyer-artificial-avatar-new-york-court-case-video.)

The Court further notes that California law provides that a person who "willfully and contrary to the oath, states as true any material matter which he or she knows to be false … is guilty of perjury." (Cal. Pen. Code § 118(a).)

The Court directs Plaintiffs to submit a declaration, under penalty of perjury, answering the following questions, concisely and directly:

> 1. Were any of Plaintiffs' evidentiary submissions created using generative artificial intelligence?
>
> 2. Were any of Plaintiffs' evidentiary photographic submissions edited in any way? (See, e.g., Ex. 7.)
>
> 3. What is the messaging platform capturing the purported messages depicted in exhibits 35 and 40?

Plaintiffs must provide all the metadata of the purported audio and video testimonials for "Salinas" (Ex. 3), Barbara Clark (Ex. 6D), Juliann Smith (Ex. 27), Geri Haas (Exs. 6A & 6C), Sarah Davis (Ex. 6B), and an unidentified person (Ex. 21). Please include the file format, date created, date modified, file type, identity of device capturing video, lens used, shutter speed, file type, and the like. Please also identify the operator of the camera that captured the purported video testimonials noted above.

Plaintiffs must also provide the metadata and certificates for the electronic signatures of the declarations of Barbara Clark, Juliann Smith, Debra Daniels, Caroline Scott, Geri Haas, and Sarah Davis.

The Court may also order the in-person appearance of "Salinas," Barbara Clark, Juliann Smith, Geri Has, Sarah Davis, the unidentified person in exhibit 21, Cristy Moore, Jane Johnson, Rose Torres, Allen Whistley, and any other person identified in the suspect evidentiary submissions.

The Court sets a hearing for August 12, 2025, at 2:30 p.m. on the order to show cause.

All parties must appear in-person at this hearing.

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> The Court orders both Ariel Mendones and Maridol Mendones to separately submit a declaration stating under penalty of perjury addressing the three questions, noted above. The requested metadata and certificates for each of the purported audio and video testimonials, and the filed declarations, must be attached as exhibits to the declaration.
>
> The declarations must be limited to 5 pages, excluding the caption page and the requested metadata and certificates.
>
> The declarations must be filed and served no later than July 29, 2025.
>
> The Court will deem any failure to file a declaration addressing each of these issues as conceding that their evidentiary submissions were created using generative AI or were altered to depict something that did not actually happen.

(OSC re Terminating Sanctions, July 11, 2025.)

On July 29, 2025, Plaintiffs filed their declarations. (*See* Pls.' Decls., July 29, 2025.)

II. LEGAL STANDARD

"By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an … unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

***3** (1) "The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(2) "The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(3) "The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

(Cal. Civ. Proc. Code § 128.7(b).)

"If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation." (§ 128.7(c).) "In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence." (*Id.*) "A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated." (§ 128.7(d).)

III. DISCUSSION

The Court finds that Plaintiffs violated section 128.7(b) of the Code of Civil Procedure by submitting fabricated evidence in support of their motion for summary judgment.

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A. Fabricated Evidentiary Submissions

The Court examined exhibits 3, 6A, 6B, 6C, 7, 21, 27, 35, and 40, reviewed Plaintiffs' declarations, and reviewed the attached metadata.

As the trier of fact on the order to show cause, the Court weighed the evidence and made credibility findings.

1. Exhibits 6A and 6C

The Court finds that exhibits 6A and 6C are products of GenAI and do not capture the actual speech and image of Geri Haas. In other words, these exhibits are deepfakes. Here is a screenshot of exhibit 6A:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The full video is available at https://drive.google.com/file/d/1xI3xCC6Xdq94PZvz7QCl6M_XDsg8q55k/view. The Court has downloaded a copy of exhibit 6A to preserve the evidence.

Here is a screenshot of exhibit 6C:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The full video is available at https://drive.google.com/file/d/1h1ae0izs07kGdF3HKALRvla-cgB1E1gF/view. The Court has downloaded a copy of exhibit 6C to preserve the evidence.

Here is a screenshot of exhibit 36:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The full video is available at https://drive.google.com/file/d/1jSMc69QkWemY0OXkl6hV2PRCnLtQtFp6/view. The Court has downloaded a copy of exhibit 36 to preserve the evidence.

While the “person” depicted in exhibits 6A and 6C bears a passing resemblance to the person depicted in exhibit 36, they are not the same person. The accent, cadence, volume, word choice, pauses, gestures, and facial expression, among other characteristics, of the person depicted in exhibit 36 are vastly different from those demonstrated by the “persons” depicted in exhibits 6A and 6C. The “persons” depicted in exhibits 6A and 6C lack expressiveness, are monotone, do not pause at moments where pauses are expected, use odd words choices, and appear generally robotic. Further, the mouth flap does not match the words being spoken. Juxtaposing these three videos together, it becomes clear that whoever the “persons” depicted in exhibits 6A and 6C are, they are not the person depicted in exhibit 36.

***4** The oddities of exhibits 6A and 6C are typical features of videos created by GenAI.

2. Exhibit 7

The Court finds that exhibit 7 was materially altered. Here is a screenshot of exhibit 7, page 2:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Here is a screenshot of exhibit 7, page 3:

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TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Here is a screenshot of exhibit 7, page 5:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
The lighting, contrast, color, and sharpness of the man depicted in these pictures compared with the lighting, contrast, color, and sharpness of the background shows that the man was stitched into the photograph taken by the Ring camera. A close inspection shows that the background is in black and white, while the man is in color.

Compare these photographs with the photographs on pages 7 and 8, which are from the same Ring camera, according to Plaintiffs:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Juxtaposing the photographs on pages 7 and 8 against the photographs on pages 2, 3, and 5 makes it clear that the photographs on pages 2, 3, and 5 were materially altered.

3. Exhibits 35 and 40

The Court finds that exhibits 35 and 40 are products of GenAI—or, at least, were materially altered. Here is a screenshot of exhibit 35:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Here are screenshots of exhibit 40:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
In their declaration, Plaintiffs stated that the messaging platform in exhibit 35 is Instagram and exhibit 40 is a Zoom iPhone group chat. These statements strain credulity: Looking at the menu bar on the lower part of the images, it is clear to this Court that exhibits 35 and 40 seem to depict the same messaging platform. Further, the font style, spacing, and sizing appear off on exhibit 40, suggesting the names and messages were altered.

4. Metadata

The Court did not find the metadata submitted by Plaintiffs reliable or credible. For instance, the information contained above the "General" field of the MacOS Inspector on pages 11, 16, 17, 18, 19, 24, 27, 28, 29, 30, 31, 32, 33, 48, 49, 51, 52, 59, 60, and 61, contains information not typically noted in metadata, such as "Copyright [entity]. All rights reserved." Other portions of the metadata included URLs to Google Maps, phone numbers, GPS coordinates, mailing addresses, and other atypical information within the "musical genre" field. (*See id.* at pp. 12–15, 37, 42–47.) The Court suspects that material metadata was added at some later point in time by someone with access to the files and with editing privileges.

5. Plaintiffs' Explanations

The Court did not find Plaintiffs' explanations in their respective declarations to be credible. Notably, in response to the first question, Maridol Mendones declared that artificial intelligence was used in all videos marked as exhibits 6A to 6D. (Pls.' Decls. at 3:23–26.) Maridol Mendones sought to shift the blame to Geri Haas for providing her with this video testimonial. (*See*

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id. at 3:13–4:3.) Her explanation, however, is not credible: Assuming the veracity of the metadata, exhibit 6A was captured on an Apple iPhone 6 Plus using its rear camera and running iOS 12.5.5. (*See id.* at p. 16.) Here's the problem for Maridol Mendones: Apple did not introduce Apple Intelligence until iOS18 and required an iPhone 16, iPhone 15 Pro, or iPhone 15 Pro Max. (*See* Apple Inc., *Apple Intelligence*, https://www.apple.com/apple-intelligence/ (last visited September. 5, 2025.) ("Apple Intelligence is available in beta on all iPhone 16 models, iPhone 15 Pro, iPhone 15 Pro Max, iPad mini (A17 Pro), and iPad and Mac models with M1 and later, with Siri and device language set to the same supported language, as part of an iOS 18, iPadOS 18, and macOS Sequoia software update.").) As such, Maridol Mendones explanation about why the person depicted in exhibit 6A is robotic is unbelievable.

6. Lingering Suspicions

***5** The Court remains suspicious of the other evidentiary submissions, but it does not have the time, funding, or technical expertise to determine the authenticity of Plaintiffs' statements or conduct a forensic analysis of the suspect evidentiary submissions.

Exhibit	Plaintiffs' Description	Plaintiffs' Link
3	"Voicemail messages of Defendant-Salinas dated December 27 to 29, 2022. Third parties mocking voicemail messages."	https://drive.google.com/file/d/1fqjOfTxKbJm G 7LodDKkFWB-KpxgTWGz/view?usp=sharing
6B	"Corroborated video testimony of Sarah Davis secondary to Geri Haas' declaration dated January 13, 2023."	https://drive.google.com/file/d/1mnASOgTl7sI rg-OLVKMI95Elyz_ySqOa/view?usp=sharing
21	"Voicemail message of Defendant-Salinas dated December 29, 2022, stating that they will waive their false allegations if the video footage will be sent to them via email."	https://drive.google.com/file/d/1Vmm9HxQwJ521rDWBPWTXy0Og_N7yMgne/view?usp=sharing
27	"Dr. Juliann Smith's testimonies with two corroborating witnesses dated July 30, 2024 at 2:35 p.m."	https://drive.google.com/file/d/12xnrtMiTyP_B5abHeZM2ycYwg9MaDAcd/view?usp=sharing

The Court has downloaded copies of these exhibits to preserve the evidence.

B. Appropriate Sanction

The Court next turns to the appropriate sanction. In determining the appropriate sanction, the Court is guided by section 128.7(d)'s guidance that "[a] sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated." (§ 128.7(d).)

1. Monetary Sanctions

The Court finds that monetary sanctions are not appropriate.

The Court is attentive to the issue of improper use of GenAI before it. (*See, e.g., Evans v. Execushield, Inc.* (Cal. Super. Ct. Mar. 10, 2025) 2025 WL 893084 (discussing the presentation of fake citations to the court by attorneys).) The misuse of GenAI in legal proceedings most frequently happens in the context of presenting fictitious citations. (*See U.S. v. Hayes* (E.D. Cal. 2025) 763 F. Supp. 3d 1054.) In that context, appropriate sanctions include (1) penalties payable to the court in the range of $1,000.00 to $5,000.00, (2) sending a copy of the order to the client, (3) sending a copy of the order to each judge falsely identified as the author of a fake opinion, (4) sending a copy of the order to all the district judges and magistrate judges in the district, and (5) sending a copy of the order to the relevant bar association. (*Id.* at 1073; *see also Mata v. Avianca, Inc.* (S.D.N.Y. 2023) 678 F. Supp. 3d 443, 466 (imposing similar sanctions); *Gjovik v. Apple Inc.* (N.D. Cal., May 19, 2025, No. 23-CV-04597-EMC) 2025 WL 1447380, at *7 ("At this juncture, the Court shall not impose any sanctions. However, it forewarns Ms. Gjovik that (1) she is responsible for verifying the accuracy of AI-generated or AI-provided information, including but not limited to case citations and content, **and** that (2) failure to do so may lead to sanctions, including but not limited to a finding of contempt and/or the ability to proceed pro se.").)

The reasons for imposing these sanctions were captured by the *Hayes* court: "Submitting fictitious cases and quotations to the court 'degrades or impugns the integrity of the Court' and 'interferes with the administration of justice' in violation of Local Rule 180(e), and violates California Rules of Professional Conduct 3.1(a)(2), 3.3(a)(1), and 3.3(a)(2)." (*See also Hayes*, 763 F. Supp. 3d at 1064.)

***6** Here, the use of GenAI went beyond the submission of fictitious citations. Plaintiffs submitted at least two exhibits created by GenAI. Further, to an even greater extent than expressed by the *Hayes* court, the use of deepfakes in a case significantly undermines the Court's ability to administer justice, significantly erodes the public's confidence in the judicial system, and significantly burdens under-resourced and overworked courts with the time-consuming task of assessing whether evidence presented to it during pretrial proceedings was a deepfake. As such, a more severe sanction is appropriate.

2. Non-monetary Sanctions

i. Referral to District Attorney for Prosecution

The Court finds that referral for criminal prosecution is not appropriate.

Plaintiffs' submission of fabricated evidence brings to the Court's mind two Penal Code statutes. The first statute concerns perjury:

> Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

(Cal. Pen. Code § 118(a).) "Perjury is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three or four years." (§ 126.)

The second statute concerns forgery:

> Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

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(§ 470(a).) "Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170." (§ 473(a).)

The Court finds that a sanction referring Plaintiffs for criminal prosecution is simultaneously too severe and not sufficiently remedial. The sanction is too severe as even being the subject of a criminal investigation may lead to social repercussions that persist after the criminal proceedings close. This civil judicial officer does not have the expertise and experience to balance all relevant considerations to determine whether a matter should be referred to the District Attorney for a criminal investigation. At the same time, a referral would do little to address the harm that Plaintiffs have caused in this civil proceeding.

ii. Evidence or Issue Sanctions

The Court finds that evidence or issue sanctions are not appropriate. This sanction would not serve an adequate deterrent against future uses. As illustrated above, examining whether evidentiary submissions were created using GenAI is labor intensive, and courts (really, the public at large) are not adequately prepared to discern whether a person depicted in a video was created using GenAI. (*See, e.g.*, Shannon Bond, *AI-generated images are everywhere. Here's how to spot them*, NPR (June 13, 2023), https://www.npr.org/2023/06/07/1180768459/how-to-identify-ai-generated-deepfake-images.) While an evidentiary or issue sanction would exclude some things that can be shown to be created by GenAI, others might sneak through the Court's or opposing party's analysis. Without robust safeguards to guard against future misuses of the legal proceedings, an evidentiary or issue sanction is effectively toothless.

iii. Terminating Sanction

***7** The Court finds that a terminating sanction is appropriate. This sanction is proportional to the harm that Plaintiffs' misuse of the Court's processes has caused. A terminating sanction serves the appropriate remedial effect of denying Plaintiffs— and other litigants seeking to make use of GenAI to submit video testimonials—of the ability to further prosecute this action after violating the Court's and the Defendants' trust so egregiously. (*See R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal. App. 4th 486, 497 (The Civil Discovery Act "authorizes terminating sanctions in the first instance in egregious cases.").)

Further, a terminating sanction serves the appropriate deterrent effect of showing the public that the Court has zero tolerance with attempting to pass deepfakes as evidence.

This sanction serves the appropriately chilling message to litigants appearing before this Court: Use GenAI in court with great caution.

As the Court cannot disentangle the extent to which Ariel Mendones was active or complicit in Maridol Mendones's actions in connection with the violation of section 128.7(b) of the Code of Civil Procedure, the Court finds that both parties must be sanctions equally.

IV. ORDERS

The Court strikes the second amended complaint from the register of actions.

The entire action is dismissed with prejudice.

Dated: 9/9/2025

<<signature>>

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Victoria Kolakowski

Judge of the Superior Court

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