



The Amazing End-of-Year Ethics Session!

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Alison J. Cohen, Esq., APA
Ilene H. Ferenczy, Esq., CPC, APA



1

Your Co-Hosts

- Joanne Pecina



- Maureen Pesek



- Tim McCutcheon



2

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3

3

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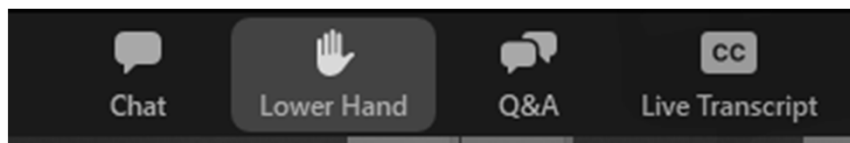
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- After the main presentation please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- At the end you will be presented with a short Google Forms survey. Please let us know how we are doing.



4

4

Live Transcript



- Click on the Live Transcript button to see Live Transcript/Closed Captioning.



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Your Presenters Today

- S. Derrin Watson, Esq.
- Alison J. Cohen, Esq., APA
- Ilene H. Ferenczy, Esq., CPC, APA



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Ethics ... What Is It?

- According to the dictionary: the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles; a theory or system of moral values



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Types of Ethics

- Ethics defined by a professional organization (like ASPPA, NIPA, AICPA, ABA) may represent what you need to do to keep your designation
- Ethics defined by a governmental department may represent what you need to do to keep your license to practice before such department (e.g., Circular 230, SEC) and may also involve criminal sanctions
- “Proper standard of care” in your industry to define what is not malpractice or negligence



8

8

What You Need

- For an IRS designation: information about Circular 230 (The IRS ethical standard)
- For ASPPA/NIPA, etc.: information about their ethical standards
- For your practice: the proper balance between IRS/ industry ethics, your personal ethics, and what your client expects of you



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What We Will Do Today

1. Present little vignettes that raise ethical issues
 - Many of these are based in real cases that we have seen
 - Some we just made up for your entertainment
2. Discuss the issues raised with the background of the Circular 230 and other ethical code rules
3. Intersperse all that with some friendly advice about “safe” ways to practice and things we see that may be well intended, but lead to ... well, you get the idea



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Act 1

A Very Griswold Form 5500



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Circular 230, §10.34: Standards for Returns and Documents, Affidavits, Papers

- You may not advise a client to take a position on a document submitted to the IRS that:
 - Is frivolous
 - Is meant to impede or delay the administration of the tax laws
 - Demonstrates an intentional disregard of a rule or regulation unless there is a good faith challenge to the rule or reg
- Or advise a client to submit a return that:
 - Lacks a reasonable basis
 - Takes an unreasonable position
 - Willfully understates tax or disregards tax rules and regulations



12

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Circular 230, §10.34: Standards for Returns and Documents, Affidavits, Papers

- You must:
 - Advise the client of any penalties that are likely to apply with respect to a position taken on a tax return or document submission; and
 - Inform the client of any opportunity to avoid such penalty by disclosure and the requirements of disclosure



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Circular 230, §10.36: Competence

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



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Circular 230, §10.33: Running a Practice

- Owners/managers should “take reasonable steps” to ensure that the firm’s procedures for all in the firm are consistent with best practices



15

Act 2



**Anybody
Want a
Peanut?**

16

Circular 230, § 10.36 Office Procedures

- If you oversee a firm's practice, you "must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with" Circular 230
- IRS can discipline you if :
 - You don't take reasonable steps to establish procedures and see that they are followed (and correct violations), and
 - "One or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with" Circular 230



17

17

Tax Fraud

- What is Tax Fraud?
 - Making a statement or filing a return or other document that has a declaration under penalty of perjury that you do not believe to be true and correct as to every material matter
 - Willfully aiding, assisting, advising in preparation of a document, return, affidavit that is fraudulent or false
 - Giving the IRS a document you know to be false
 - Willfully attempting to evade or defeat a tax
 - A CRIME!



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**The IRS is Not
Kidding About
This!**



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Act 3



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Circular 230, §10.30: Solicitation

- No false, fraudulent, coercive statements or claims
- Cannot use the term “certified” or imply that you are an IRS employee
- If make uninvited solicitation, must clearly identify as such and identify source of information used in choosing the recipient
- Fee information cannot be misleading



21

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Circular 230, §10.37: Written Advice

- In giving written advice, a practitioner must:
 - Base the advice on reasonable factual and legal assumptions (must make reasonable efforts to ascertain facts)
 - Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know
 - Not rely upon any representations, statements, findings, or agreements by the taxpayer or other representative if reliance is unreasonable
 - Relate applicable law and authorities to facts



22

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NIPA Code of Ethics §13

I shall not engage in any activity or conduct which constitutes dishonest, deceitful, fraudulent, or willfully illegal acts while conducting my practice as a pension administrator



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NIPA Code of Ethics §7

“I will avoid conflicts of interest, but if such conflicts arise, I will resolve them so that financial gain or other personal benefit will not interfere with my obligation to serve the interests of plan participants and their beneficiaries.”



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ASPPA Code of Conduct §8

A Member shall perform Professional Services with courtesy and shall cooperate with others in the Principal's interest.



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ASPPA Code of Conduct §10

A Member shall perform Professional Services, and shall take reasonable steps to ensure that Professional Services rendered under the Member's supervision are performed, with honesty, integrity, skill and care.



26

Act 4

ONLY ESOPs IN THE BUILDING



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Circular 230, §10.36: Competence

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 - Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged
 - A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law



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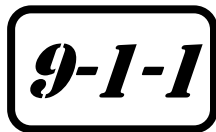
ASPPA Code of Conduct §10

A Member shall perform Professional Services, and shall take reasonable steps to ensure that Professional Services rendered under the Member's supervision are performed, with honesty, integrity, skill and care.



29

Act 5



Save My Plan!



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**Weren't You
Listening
Before?!**



31

Tax Fraud

- What is Tax Fraud?
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 - A CRIME!

32

By the Way ...



- If you are the one who made the mistake:
 - Do not admit fault until you talk to your E&O insurer
 - Most policies say that if you admit fault before you advise them of the problem, you VOID your coverage



33

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Circular 230, §10.33: Running a Practice

- Owners/managers should “take reasonable steps” to ensure that the firm’s procedures for all in the firm are consistent with best practices



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Circular 230, §10.34: Standards for Returns, Docs, Affidavits, Etc.

- You may:
 - Rely in good faith on information provided by the client
- You may not:
 - Ignore implications of information furnished, and must make reasonable inquiries if the information appears to be incorrect, inconsistent with facts, or incomplete



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Act 6

**WHITE COLLAR
PENSION GUYS**



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Circular 230, §10.36: Competence

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37

37

Circular 230, §10.29: Conflicts of Interest

- Cannot accept representation of a client if there is a conflict of interest:
 - Representation will be directly adverse to another client; or
 - Significant risk that representation to one or more clients will be materially limited by responsibilities to other clients or third parties or practitioner's own interests
- Exception to prohibition:
 - You reasonably believe you can provide competent and diligent representation, notwithstanding the conflict
 - Representation not prohibited by law
 - Each affected client is advised of and waives the conflict in writing



38

38

Circular 230, §10.37: Written Advice

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 - Base the advice on reasonable factual and legal assumptions (must make reasonable efforts to ascertain facts)
 - Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know
 - Not rely upon any representations, statements, findings, or agreements by the taxpayer or other representative if reliance is unreasonable
 - Relate applicable law and authorities to facts



39

39

Circular 230, §10.37: Written Advice (cont'd)

- When can you reasonably rely on another?
 - A practitioner may rely on the advice of another person only if the advice is reasonable, and the reliance is in good faith considering all the facts and circumstances



40

40

Practical Advice for You

1. Don't make someone else's problem your problem.
2. Don't compromise your ethics and good name for someone else (who, incidentally, is already showing that he will sacrifice someone else for himself and will throw you under the bus in a heartbeat)
3. There's enough business out there that you don't have to do anything improper to make a living.



41

41

Act 7

**RUDOLPH, THE
FRUSTRATED
PLAN SPONSOR**



42

42

Circular 230, §10.36: Competence (Yes, Again!)

- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service:
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43

43

Circular 230, §10.21: Knowledge of Client's Omission

- If you know that the client has omitted material information or made an error in any filing with the IRS, must advise client:
 - That the omission or error was made;
and
 - The potential consequences of the omission or error



44

44

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 - "One or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with" Circular 230



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45

Questions?



46

46

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47

47

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- Please check spam folder.
- Any questions? Email: support@erisapedia.com.
- After the webcast you will be presented with a short Google Forms survey. Please let us know how we are doing.



48

48

For Further Study

Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.



49