

ASPPA CODE OF PROFESSIONAL CONDUCT ETHICAL REQUIREMENTS



BY SHELDON H. SMITH, ESQ., APM

Unlike unregulated service businesses, professional practices have rules and ethical codes that practitioners must follow. ASPPA has its own Code of Professional Conduct and a disciplinary procedure for its credentialed members. The American Bar Association provides the Model Code of Professional Responsibility and the American Bar Association Model Rules of Professional Conduct. CPAs must follow the AICPA Code of Professional Conduct and the

AICPA Statements on Responsibility in Tax Practice. There is a Code of Professional Conduct adopted by the American Academy of Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries, and ASPPA has its own code for actuarial conduct. Treasury Regulations commonly referred to as Circular 230 contain ethical rules for practitioners who are subject to the jurisdiction of

“Ethics” is defined in Black’s Law Dictionary, 7th ed. (West 1999), as follows:

“Ethical. Adj. 1. Of or relating to moral obligations that one person owes another; esp., in law, of or relating to legal ethics. ... 2. In conformity with moral norms or standards of professional conduct <the judge’s recusal was a perfectly ethical act>.”

the Office of Professional Responsibility (OPR). This article focuses on the ASPPA Code of Professional Conduct and its ethics components.

ASPPA is committed to encouraging every retirement plan professional to achieve and maintain the highest levels of technical competence and integrity. To this end, each member of ASPPA must abide by certain professional and ethical standards set forth in the ASPPA Code of Professional Conduct (ASPPA Code).

PROFESSIONAL INTEGRITY

An ASPPA member is required to perform professional services with honesty, integrity, skill, and care and to observe standards of professional

conduct in the course of providing advice, recommendations, and other services performed for a client. An ASPPA member who pleads guilty to, or is found guilty of, any misdemeanor related to financial matters or any felony shall be presumed to have contravened the ASPPA Code and is subject to ASPPA’s counseling and disciplinary procedures, which could lead to loss of membership status. It should be self-evident how this requirement imposes moral obligations that one person owes to another.

QUALIFICATION STANDARDS

An ASPPA member may render opinions or advice, or perform professional services only when qualified to do so based on education,

training, or experience. The Circular 230 requirements for that affect attorneys, CPAs, enrolled actuaries, and enrolled retirement plan agents (ERPAs). They set high standards and impose significant discipline for failure to meet this obligation. It’s highly unethical to render an opinion, give advice, or perform a service when you’re not competent to do so. ASPPA members who don’t possess the requisite skills are required to seek assistance from someone who does possess those skills in order to avoid acting unethically.

DISCLOSURE

An ASPPA member is required to make full and timely disclosure to a client of all sources of compensation or other material consideration that the member or the member’s firm may receive in relation to an engagement for the client. New Department of Labor disclosure requirements that go into effect in 2012 will enhance this obligation and make compliance more automatic. Of course, this begs the question: If I comply with the ERISA § 408(b)(2) disclosure requirements, have I met the requirements contained in this part of the ASPPA Code? One would logically presume that the answer will require an analysis of all the facts and circumstances.

Disclosure also requires that an ASPPA member who is not financially and organizationally independent concerning any matter related to the performance of professional services must disclose to the client any pertinent relationship that’s not apparent. This transparency furthers the moral obligation owed to one’s client.

CONFLICTS OF INTEREST

As with Circular 230 and state law ethical standards for licensed practitioners, an ASPPA member may not perform professional services involving an actual or potential conflict of interest. The ASPPA Code carves out exceptions not inconsistent with the Circular 230 exceptions:

The member's ability to act fairly is unimpaired; there has been full disclosure of the conflict to the principal(s); and/or all clients and potential clients have expressly agreed to the performance of the services by the member.

The ASPPA Code isn't quite as stringent as Circular 230 with regard to addressing certain conflicts of interest and provides: If the member is aware of any significant conflict between the interests of a client and the interests of another party, the member should advise the client of the conflict and should also include appropriate qualifications or disclosures in any related communication. It is important to appreciate that there might be conflicts that involve self-interest directly that must be avoided. There are "issue conflicts" that might prevent an ASPPA member from taking a position with the government for a client and contradicting that position

on behalf of another client. It is, of course, important to avoid even the appearance of a conflict of interest in order to act as an ethical professional.

CONTROL OF WORK PRODUCT

ASPPA members are not to perform professional services when the

member has reason to believe that those services may be used to mislead or to violate or evade the law. The ASPPA Code requires sensitivity to the misuse of statements and the avoidance of misleading statements. This is also important to recognize when an ASPPA member is acting in a fiduciary capacity with respect to a plan. Violation is sure to result in a breach of fiduciary duty.

CONFIDENTIALITY

An ASPPA member is not to disclose to another party any confidential information obtained through a professional assignment performed for a client unless authorized to do so by the client or required to do so by law. The ASPPA Code defines "confidential information" as information not in the public domain of which the member becomes aware during the course of rendering professional services to a client. It may include information of a

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proprietary nature, information that is legally restricted from circulation, or information the member has reason to believe the client wouldn't want divulged.

COURTESY AND COOPERATION

An ASPPA member must perform professional services with courtesy and is expected to cooperate with others in the client's interest. The ASPPA Code recognizes that a client has an indisputable right to choose a professional advisor. A member may provide service to any client who requests it even though the client is being or has been served by another benefits professional in the same matter.

If an ASPPA member is invited to advise a client for whom the member knows, or has reasonable grounds to believe, that another benefits professional is already acting in a professional capacity with respect to

the same matter or has recently so acted, it's expected, as a matter of prudence, for the member to consult with the other benefits professional to prepare adequately for the assignment and to make an informed determination whether there are potential violations of the ASPPA Code that might affect acceptance of the assignment.

ADVERTISING

An ASPPA member may not engage in any advertising or business solicitation activities with respect to professional services that the member knows or should know are false or misleading. "Advertising" encompasses all communications by whatever medium, including oral communications, which may directly or indirectly influence any person or organization to decide whether there is a need for professional services or to select a specific person or firm to perform such services.

CONCLUSION

Most of the controlled conduct described in the ASPPA Code suggests, even mandates, ethical practices. It's not simply sufficient to meet the constraints of the ASPPA Code. Doing so in a proper and ethical manner is critical to acting as a professional. That overarching duty to honor moral obligations to another should be paramount in any professional practice. **PC**



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