

CHAPTER 11
RULES OF PROFESSIONAL CONDUCT

[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—11.1(542C) Definitions. The following definitions of terminology are applicable wherever such terminology is used in the rules of professional conduct.

“Client.” The term “client,” when used, means a person(s) or entity which retains a CPA or AP or an accounting firm, engaged in the practice of public accountancy, for the performance of professional services.

“Commission.” “Commission” means any form of compensation in a fixed or variable amount or percent received for selling, recommending or referring a product or service of another. “Commission” includes a referral fee.

“Compensation.” “Compensation” means anything of value received by a CPA or AP while practicing public accounting or for selling, recommending or referring a product or service of another.

“Contingent fee.” “Contingent fee” means a fee established for the performance of any service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon the finding or result of such service. “Contingent fee” does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.

“Enterprise.” The term “enterprise,” when used, means any person(s) or entity, whether organized for a profit or not, for which a CPA or AP performs professional services.

“Financial statements.” The term “financial statements,” when used, means the statements and footnotes related thereto that purport to show financial position which relates to a point in time or cash flows which relate to a period of time, including statements which use a cash or other incomplete basis of accounting. The term includes balance sheets, statements of income, statements of retained earnings, statements of cash flows and statements of changes in owners’ equity, but does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting schedules.

“Practice of public accountancy.” Offering to perform or performing for a client one or more types of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more types of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, while holding oneself out in such a manner as to state or imply that one is a CPA or AP.

“Professional services.” Any services performed or offered to be performed by a CPA or AP for a client in the course of the practice of public accountancy.

“Public communication.” A communication made in identical form to multiple persons or to the world at large, as by television, radio, motion picture, newspaper, pamphlet, mass mailing, letterhead, business card or directory.

193A—11.2(542C) Applicability.

11.2(1) The rules of professional conduct which follow rest upon the premises that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action, to strive continuously to improve one's professional skills, to observe where applicable generally accepted accounting principles and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

11.2(2) Acceptance of a certificate as a CPA or a license as an AP or the acceptance of a permit to engage in the practice of public accountancy involves acceptance by the CPA or AP of the obligations set forth in the preceding rule and accordingly a duty to abide by the rules of professional conduct.

11.2(3) The rules of professional conduct are intended to have application to all kinds of professional services performed in the practice of public accountancy, including tax and management advisory services, and to apply as well to all CPAs and APs whether or not engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is more limited.

11.2(4) A CPA or AP who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the rules, so long as their conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or AP is practicing. However, even in such a case, if a CPA's or AP's name is associated with financial statements in such manner as to imply that the CPA or AP is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices are followed, the CPA or AP will be expected to comply with subrules 11.4(2) and 11.4(3).

11.2(5) In the interpretation and enforcement of the rules of professional conduct, the board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by other state boards of accountancy, and by appropriately authorized committees on ethics of professional organizations.

11.2(6) A CPA or AP may be held responsible for compliance with the rules of professional conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision or are the accountant's partners or shareholders in the practice.

193A—11.3(542C) Independence, integrity and objectivity.

11.3(1) Independence. A CPA or a firm of which the CPA is a partner or shareholder shall not express an opinion on financial statements of an enterprise in such a manner as to imply that the CPA is acting as an independent public accountant with respect thereto unless the CPA is independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

a. During the period of the professional engagement, or at the time of expressing an opinion, the CPA:

(1) Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or

(2) Had any joint closely held business investment with the enterprise or any officer, director or principal stockholder thereof which was material in relation to the net worth of either the CPA or the enterprise; or

(3) Had any loan to or from the enterprise or any officer, director or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms and requirements: Loans obtained by the CPA which are not material in relation to the net worth of the borrower; home mortgages; and other secured loans, except those secured solely by a guarantee of the CPA.

b. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the CPA:

(1) Was connected with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

(2) Was a trustee for any pension or profit-sharing trust of the enterprise.

The foregoing examples are not intended to be all-inclusive.

11.3(2) *Performance of services below direct cost.* A CPA who performs or offers to perform at-test services involving audit and review skills for compensation that is less than direct labor cost reasonably expected to be incurred in performing the service creates a presumption of loss of independence and objectivity.

a. Direct labor cost means the total compensation paid to the person or persons actually performing the services including direct out-of-pocket expenses and the employer payroll expenses, such as workers' compensation insurance premiums, social security contributions, and unemployment taxes related to the compensation paid to the person or persons actually performing the services.

b. This rule does not apply to the donation of services to a charitable organization.

11.3(3) *Integrity and objectivity.* A CPA or AP shall not, in the performance of professional services, knowingly misrepresent facts, subordinate judgment to others, or allow professional judgment to be impaired by self-interest. In tax practice, however, a CPA or AP may resolve doubt in favor of the client as long as there is reasonable support for this position.

11.3(4) *Commissions.* A CPA or AP may accept a commission subject to the prohibitions set forth in Iowa Code section 542C.3, subsection 6, and the restrictions set forth in these rules.

a. A CPA or AP engaged in the practice of public accounting must act in the best interests of the client and shall not allow integrity, objectivity or professional judgment to be impaired by the self-interest a commission-based fee may create.

b. A CPA or AP who anticipates receiving a commission in connection with the recommendation, referral or sale of a product or service must establish such procedures as are reasonably necessary to avoid the prohibitions set forth in Iowa Code section 542C.3, subsection 6.

c. A CPA or AP engaged in the practice of public accounting who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the CPA or AP recommends, refers or sells a product or service to which the commission relates.

d. To ensure full and effective disclosure, a CPA or AP shall substantially adhere to the following guidelines when recommending, referring or selling a product or service to which a commission relates:

(1) The disclosure shall be in writing, signed and dated by the person to whom a product or service is recommended, referred or sold, and a copy shall be provided to the client.

(2) The disclosure shall be made at or prior to the time the product or service is recommended, referred or sold.

(3) The disclosure shall be legible, clear and conspicuous, and on a separate form.

(4) A copy of the disclosure shall be retained by the CPA or AP for as long as the CPA or AP deems appropriate to the transaction; however, the board recommends a minimum of three years.

(5) In the event of a continuing engagement or series of related transactions involving similar products or services, one written disclosure may cover more than one recommendation, referral or sale as long as the disclosure is provided at least annually and is not misleading.

This rule does not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to heirs or estates of such persons.

11.3(5) *Contingent fees.* A CPA or AP may accept contingent fees as defined in rule 193A—11.1(542C) subject to the prohibitions set forth in Iowa Code section 542C.3, subsection 6, and restrictions set forth in these rules.

11.3(6) Rescinded IAB 7/30/97, effective 9/3/97.

193A—11.4(542C) Competence and technical standards.

11.4(1) *Competence.* A CPA or AP shall not undertake any engagement for the performance of professional services which the accountant or accountant's firm cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with subrules 11.4(2) and 11.4(3).

11.4(2) *Auditing standards.* CPAs shall not permit their names to be associated with financial statements in such a manner as to imply that they are acting as an independent public accountant unless they have complied with the applicable generally accepted auditing standards. The board will consider the American Institute of Certified Public Accountants Professional Standards, including the Statements on Standards for Accounting and Review Services (SSARS), as sources of interpretations of generally accepted auditing standards.

11.4(3) *Accounting principles.* A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the CPA can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such cases the accountant's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle(s) would result in a misleading statement. The board will consider the pronouncements issued by the Financial Accounting Standards Board and its predecessor entities as sources of interpretations of generally accepted accounting principles.

11.4(4) *Forecasts.* A CPA or AP shall not in the performance of professional services permit the CPA's or AP's name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the accountant vouches for the achievability of the forecast.

193A—11.5(542C) Responsibilities to clients.

11.5(1) *Confidential client information.* A CPA or AP shall not without the consent of the accountant's client disclose any confidential information pertaining to the client obtained in the course of performing professional services. This rule does not:

a. Relieve a CPA of any obligations under subrules 11.4(2) and 11.4(3), or

b. Affect in any way a CPA's obligation to comply with a validly issued subpoena or summons enforceable by order of a court, or

c. Prohibit disclosures in the course of a peer review of a CPA's professional services, or

d. Preclude a CPA from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board. Members of the board and professional practice reviewers shall not disclose any confidential information which comes to their attention from a CPA or AP in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body of the kind referred to above.

11.5(2) Records. A CPA or AP shall furnish to a client or former client, upon request made within a reasonable time after original issuance of the document in question:

a. A copy of a tax return of the client, and

b. A copy of any report, or other document, issued by the CPA or AP to or for such client, and

c. Any accounting or other records belonging to, or obtained from or on behalf of, the client which a CPA or AP removed from the client's premises or received for the client's account, but the accountant may make and retain copies of such documents when they form the basis for work done by a CPA or AP, and

d. A copy of the working papers of the CPA or AP to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

e. A copy of all disclosures required by subrule 11.3(4).

193A—11.6(542C) Other responsibilities and practices.

11.6(1) Acts discreditable. A CPA or AP shall not commit any act that reflects adversely on the CPA's or AP's fitness to engage in the practice of public accountancy. The board may consider discipline by any other agency or jurisdiction when determining probable cause to take action against a CPA or AP for acts discreditable.

11.6(2) Advertising. A CPA or AP shall not use or participate in the use of any form of public communication having reference to professional services which contains a false, fraudulent, misleading, deceptive or unfair statement or claim. A false, fraudulent, misleading, deceptive or unfair statement or claim includes but is not limited to a statement or claim which:

a. Contains a misrepresentation of fact; or

b. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

c. Contains any testimonial or laudatory statement, or other statement or implication that the CPA's or AP's professional services are of exceptional quality; or

d. Is intended to likely create false or unjustified expectations of favorable results; or

e. Implies educational or professional attainments or licensing recognition not supported in fact; or

f. States or implies that the CPA or AP has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case; or

g. Represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or

h. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

11.6(3) Solicitation. A CPA or AP shall not by any direct personal communication solicit an engagement to perform professional services.

a. If the communication would violate subrule 11.6(2) if it were a public communication; or

b. By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or vexations or harassing conduct; or

c. If the solicitation communication contains proposals which would be in violation of rules 11.3(542C) or 11.4(542C).

11.6(4) Acting through others. A CPA or AP shall not permit others to carry out on their behalf, either with or without compensation, acts which, if carried out by the CPA or AP, would violate the Rules of Professional Conduct.

11.6(5) Form of practice. A CPA or AP may practice public accountancy only in a proprietorship, a partnership, a corporation, or a professional limited company. A corporation must be organized in accordance with Iowa Code chapter 496C. A professional limited company must be organized in accordance with Iowa Code chapter 490A, subchapter XV.

11.6(6) Firm names. A CPA or AP shall not practice public accountancy under a firm name which is misleading in any way, as to the legal form of the firm, or as to the persons who are partners, officers, shareholders, or members of the firm, or as to any matter with respect to which public communications are restricted by subrule 11.6(2). However, names of one or more past partners, shareholders, or members may be included in the firm name of a partnership, corporation, or professional limited company or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner. Sole practitioners are prohibited from using “and Company” or “and Co.” or a similar designation as set forth in Iowa Code section 542C.25(10).

11.6(7) Communications. A CPA or AP shall, when requested, respond to communications from the board within 30 days of the mailing of such communications by registered or certified mail.

These rules are intended to implement Iowa Code section 542C.3.

193A—11.7(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1) “k,” the accountancy examining board establishes the impaired licensee review committee.

11.7(1) Definitions. The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

“Committee” means the impaired licensee review committee.

“Contract” means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

“Impairment” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

“Licensee” means a person registered under Iowa Code chapter 542C.

“Self-report” means the licensee’s providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging the same from a second party.

11.7(2) Purpose. The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments.

11.7(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the committee. The membership of the committee may include:

- a. One or more members of the accountancy examining board and
- b. A licensed professional with expertise in impairment treatment programs.

11.7(4) *Eligibility.* To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

- a. The licensee must self-report an impairment or suspected impairment directly to the office of the board;
- b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances, or illegal substances;
- c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;
- d. The licensee has not caused harm or injury to a client;
- e. There is currently no board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;
- f. The licensee has not been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of accountancy;
- g. The licensee has provided truthful information and fully cooperated with the board or committee.

11.7(5) *Meetings.* The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

11.7(6) *Terms of participation.* A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

11.7(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for purpose of disciplinary action.

11.7(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

11.7(9) *Limitations.* The committee establishes the terms of and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

11.7(10) Confidentiality. The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

This rule is intended to implement Iowa Code chapter 272C.

[Filed and effective 9/22/75 under 17A, C '73]

[Filed 9/27/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]

[Filed 10/9/80, Notice 9/3/80—published 10/29/80, effective 12/3/80]

[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]

[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]

[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]

[Filed 7/11/97, Notice 4/23/97—published 7/30/97, effective 9/3/97]