30th ANNUAL
PAUL J. HARTMAN
STATE AND LOCAL TAX FORUM

Ethics For SALT Professionals As We Face The Next Thirty Years

30th Annual Paul J. Hartman State and Local Forum

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Ethics For SALT Professionals As We Face The Next Thirty Years

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The Ethical Landscape

A man wrote a letter to the IRS saying, "I have been unable to sleep knowing that I have cheated on my income tax. I have understated my taxable income and enclose a check for $1,500…"

The Ethical Landscape

"**. . . If I still can't sleep, I will send in the rest.**"

Introduction

"No man has a good enough memory to be a successful liar."
– Abraham Lincoln

"Always do right. This will gratify some people and astonish the rest."
– Mark Twain

"There's one way to find out if a man is honest – ask him. If he says 'yes,' he is a crook."
– Groucho Marx

"There is no such thing as a minor lapse of integrity."
– Tom Peters

"The internal revenue code has made more liars out of the American public than golf."
– Will Rogers

Ethical Norms in Taxation

Who determines what is "ethical behavior" for tax advisors?

- State Laws and Professional Organizations
- Professional Requirements:
  - State Bar Associations (Mandatory and Elective)
  - State Boards of Accountancy
- Professional Standards:
  - ABA Model Rules
  - AICPA

What are Tax "Ethics"

Ethical conflicts arise between a lawyer's or CPA's responsibility to his/her clients, to the legal system generally, and to the lawyer's or CPA's own specific interests.

For tax professionals, the "legal system" is broader than it is in other contexts, as it implicates:

- **state substantive law**
- **federal substantive law**
- **professional organization rules**
- **treasury regulations**
- **treasury organizational rules**

Compare to non-tax professionals who are typically constrained by a set of laws and professional organization rules alone.

Purpose and Function of **Ethics Codes**

- Reflect organizational values
- Articulate principles and standards
- Advise members of accepted conduct—and conduct that is not acceptable (behavior may be branded unethical even though it is not unlawful)
- Provide aspiration to members and, through enforcement measures, protect integrity of the organization
- Assist members in identifying ethical issues and provide a framework for resolution

AGENDA

- Review of ABA Rules of Professional Conduct - Discuss ABA Ethics Rules 1.1 (Competence), 1.6 (Confidentiality of Information), 3.3 (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 7.1 (Communication Concerning Lawyer's Services), and 8.3 (Reporting Professional Misconduct), among others, as they apply to cutting-edge case studies.

- Review of Select ABA Formal Opinions and Select State Ethics Rules and Opinions, Attorneys Use of Websites to Market their Practices, Lawyer's Obligations after an Electronic Data Breach or Cyberattack, Lawyer's Obligation where Client Lies in Discovery Requests, and Acceptance of Cryptocurrency as Payment for Legal services. Review key newly enacted rules relating to the use of technology by tax professionals.

- Learn how to navigate the unique ethical dilemmas that have arisen due to the COVID-19 pandemic. Apply professional ethics standards to cutting-edge scenarios.

Select ABA Model Rules
Applicable to Tax Professionals

ABA	*Topic*
Rule 1.1	*Competence*
Rule 1.6	*Confidentiality of Information*
Rule 1.7	*Conflict of Interest: Current Clients*
Rule 1.8	*Conflict of Interest: Current Clients: Specific Rules*
Rule 3.3	*Candor Toward the Tribunal*
Rule 4.1	*Truthfulness in Statements to Others*
Rule 4.4	*Respect for the Rights of Third Parties*
Rule 7.1	*Communication Concerning a Lawyer's Services*
Rule 7.4	*Communications of Fields of Practice*
Rule 8.3	*Reporting Professional Misconduct*

Select ABA **Formal Opinions**

ABA Formal Opinion	*Topic*
ABA Opinion 10-457	***Attorneys use of Websites to Market their Practices***
ABA Opinion 04-433	***Obligation of a Lawyer to Report Professional Misconduct of a Lawyer not engaged in the Practice of Law***
ABA Opinion 483	***Lawyer's Obligations after an Electronic Data Breach or Cyberattack***
ABA Opinion 92-364	***Sexual Relations with Clients***
ABA Opinion 93-376	***The Lawyer's Obligation where a Client Lies in Response to Discovery Requests***
ABA Opinion 94-387	***Disclosure to Opposing Party and Court That Statute of Limitations has Run***
ABA Formal Opinion 378	***Acceptance of Cryptocurrency as Payment for Legal Fees--Conclusion (June 2020)***

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Select State Ethics Rules & Opinions

State Rule or Opinion	*Topic*
NYS Opinion 972	***Listing in Social Media***
NYS Opinion 1240	***Duty to Protect Client Information Stored on a Lawyer's Smartphone***
Texas Opinion 692	***Duty to Correct False Statements by Client During Deposition***
Maine Ethics Op. No. 207	***The Ethics of Cloud Computing and Storage***
Penn. Formal Op. No. 2011-200	***Ethical Obligations for Attorneys Using Cloud Computing/Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property***
N.C. 2011 Formal Op. No. 6	***Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property***
Or. Formal Op. No. 2011-188	***Information Relating to Representation of a Client: Third-Party Electronic Storage of Client Materials***
Wash. Adv. Op. 2215 (2012)	***Cloud Computing***
DC Ethics Opinion 378	***Acceptance of Cryptocurrency as Payment for Legal Fees***
NC State Bar 2019 Formal Ethics Opinion 5	***Receipt of Virtual Currency in Law Practice (October 25, 2019)***

Ethics Standards - AICPA

AICPA Code of Professional Conduct Structure

Introduction

- **Section 50 – Principles of Professional Conduct**
- **Section 90 – Rules: Applicability and Definitions**
- **Section 100 – Independence, Integrity, and Objectivity**
- **Section 200 – General Standards Accounting Principles**

AICPA Code of Professional Conduct Structure

Introduction (cont.)

- **Section 300 – Responsibilities to Clients**
- **Section 400 – Responsibilities to Colleagues**
- **Section 500 – Other Responsibilities and Practices**
- **ET Appendixes**
- **ET Topical Index**

http://www.aicpa.org/about/code/index.htm

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Poll Everywhere **Instructions**

- When prompted by the Moderator, please use your cell phone to text your response to questions that will appear on the screen
- Standard Texting rates may apply
- Max cost: $0.20
- We have no access to your phone number
- Capitalization doesn't matter, but spaces and spelling do!

Poll Everywhere

- Text 22333
- Enter message **glennmccoy063**
- You will receive a text message response from Poll Everywhere confirming that you have joined the Poll.

Ethical Scenario #1

Vicky Virtual of VVVP has an associate, Randy Remote, who resides and works from withing the State of Tennessee. Vicky asked Randy to set up a ZOOM call with one of her biggest clients whom she is representing in litigation in Nevada. Randy set up the call but failed to engage a lobby feature for the ZOOM video conference. (Note: A lobby feature requires that the host of the ZOOM conference "admit" all attendees.) As a result, during the ZOOM call with Vicky, Randy, and the client, opposing counsel in the litigation matter against client was able to join the call without being noticed, and overheard key pieces of VVVP's case which he will use against Vicky's client. Have Vicky or Randy violated any ethical rules?

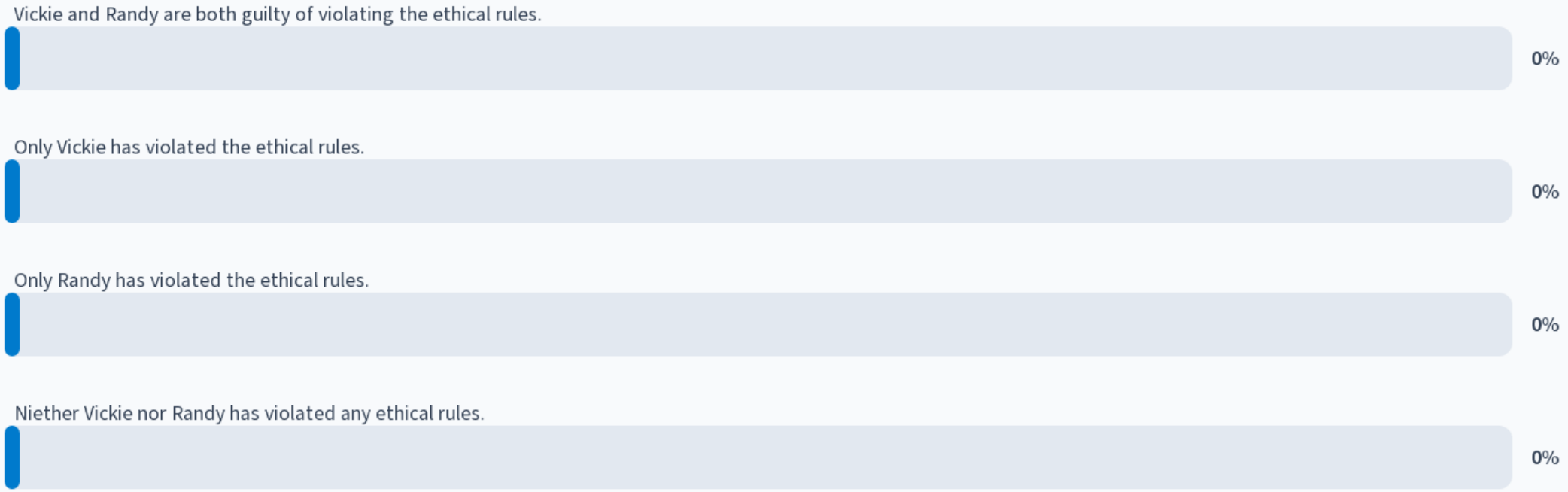
A. Vickie and Randy are both guilty of violating the ethical rules

B. Only Vickie has violated the ethical rules.

C. Only Randy has violated the ethical rules.

D. Neither Vickie nor Randy has violated any ethical rules.

Vicky Virtual has an associate, Randy Remote, who resides & works from TN. Vicky asked Randy to set up a ZOOM with a NV litigation client. Randy didn't set up lobby feature. Vicky was ZOOM Bombed by opposing counsel. Ethical violations?



Ethical Scenario #1

Answer: B

Vicky is guilty of failing to adequately supervise Randy and/or establish policies and practices to ensure that he operates in accordance with VVVP's policies, procedures and rules of professional conduct. Pursuant to ABA Model Rule 5.1 and 5.3, a supervising attorney is tasked with ensuring the subordinate attorney and non-lawyer personnel are aware of and operate in conformance with the rules of professional conduct. Supervision, exercise of managerial authority, in a virtual practice still requires reasonable efforts to "ensure that subordinate lawyers and non-lawyer assistants comply with the applicable Rules of Professional Conduct." Lawyers are required to provide appropriate instruction and supervision concerning the ethical obligations of their employment, including the obligation to safeguard the client's confidences. Per Model Rules 5.1 & 5.3, considering that Vicky has managerial authority over the attorneys at the firm, she should have made reasonable efforts to ensure that subordinate lawyers such as Randy Remote comply with the ethical rules.

Ethical Scenario #2

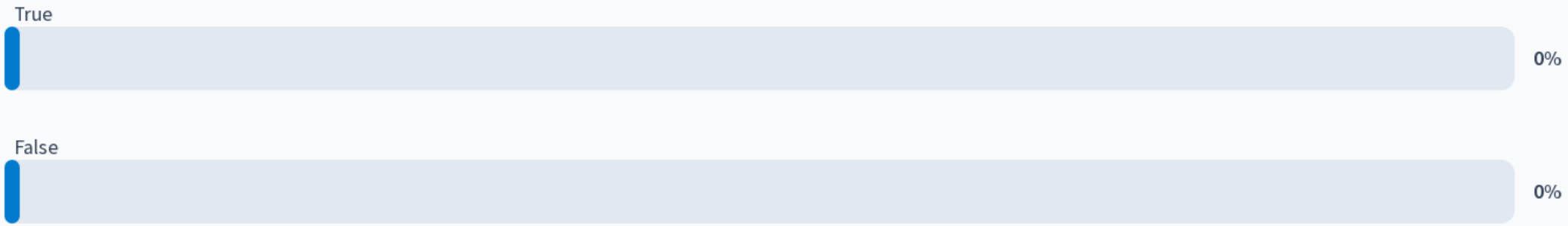
Horatio Homebody is a licensed attorney in Nevada and California. He lives just over the Nevada border in California and represents clients in both states. Horatio hates to leave his house, so he works primarily from his home in California. Horatio will periodically meet with his California clients at his home in California; however, when he needs to meet with his Nevada clients, he utilizes an open concept co-working arrangement where he can pay by the hour. (Nevada is notorious for professions where patrons pay by the hour). Horatio is not affiliated with any attorney in Nevada and has never had a Nevada attorney admitted in any of his cases *pro hac vice*. As part of Horatio's co-working arrangement, he has an administrative assistant and a receptionist. The receptionist transfers phone calls received at the workspace to Horatio's cell phone, collects mail for Horatio, immediately forwarding it to him without opening it.

Horatio violated his Ethical Duties to his Nevada Clients

A. True

B. False

Horatio Homebody is licensed in NV and CA. He lives in CA. When meeting with NV clients, he uses an open concept space in NV. He's not affiliated with NV counsel, and has assistant transfer calls and collect mail. T or F: Violation to NV clients?



Ethical Scenario #2

Answer: A. True

In Nevada--Technically, pursuant to Nevada Ethics Opinion No. 59, the use of a co-working office space will satisfy the requirement that a Nevada licensed attorney have a Nevada office, pursuant to Supreme Court Rule. 42.1. As such, he is not required to affiliated with an "in state" attorney as the co-working office space will satisfy the Nevada ethical rules for presence. [Nv. Ethics Op. #59.] However, the maintenance of the Nevada office alone is not sufficient, as Horatio must also adhere to all other rules of practice within the state. [SCR 42.1(3).] In this case, Horatio has violated the Rule of Professional Conduct 1.6 relating to confidentiality of information. After doing so much correctly (encrypted email, secure phone line, forwarding of mail and calls, etc.) Horatio fails the most basic level of privacy related to conversations due to the open floor plan. HE AIN'T GOT NO WALLS! As such, the private conversations between Horatio and his clients are available for the other renters of co-working office space to hear.

In New York--It is unclear whether a co-working arrangement would satisfy the ethics requirements in New York, arguably it does. New York issued an advisory opinion whereby it indicated that so long as work is performed in such a way where the ethical requirements, including confidentiality and competence, are satisfied, co-working agreements are not violative of the ethical standards of New York. See NY Ethics Opinion 1102 (2016); NY RPC §1.0 (comment [2]). New York admitted attorneys who are not resident in New York, may have to deal with Judiciary Law §470 in New York in a co-working space environment. NY Ethics Opinion 1223 (2021). NY Judiciary law, as interpreted by *Schoenefeld v. State*, 25 N.Y.3d 22 (2015) requires that a New York licensed nonresident attorney maintain a physical office in New York. The New York Ethics Commission understands that this does not comport with actual practice currently, but did not opine on the topic, leaving the interpretation (arguably) falling to the interpretation through *Schoenefeld*, requiring physical presence within the state.

Ethical Scenario #3

Matt is a SALT partner in a nationwide law firm. Matt's firm utilizes a well-vetted third-party cloud computing service provider to store confidential client information – technology that Matt utilizes on a daily basis, but really does not understand. The firm's cloud storage is hacked and the confidential information of some of Matt's clients is accessed. Matt promptly notifies the affected clients regarding the breach. Has Matt satisfied his ethical obligations?

A. **Yes, because Matt's firm used a well-vetted cloud storage service provider and Matt promptly notified the affected clients.**
B. **Yes, because Matt is entitled to rely on his firm's IT department and CIO to protect clients' confidential information.**
C. **No, because Matt does not understand the basic features of the relevant technology.**
D. **No, because Matt's duty to notify affected clients of the breach is continuing and must include material developments in post-breach investigations affecting the client's confidential information.**
E. **C and D**

Matt is a Tax partner. His firm utilizes an approved 3rd-party cloud computing service. Matt uses it daily, but doesn't understand it. Cloud storage is hacked, releasing confidential info. of clients. He notifies clients of breach. Is he good?

Yes, because Matt's firm used a well-vetted cloud storage service provider, and he promptly notified affected clients. 0%

Yes, because Matt is entitled to rely on his firm's IT department and CIO to protect clients' confidential information. 0%

No, because Matt does not understand the basic features of the relevant technology. 0%

No, because Matt's duty to notify affected clients of the breach is continuing and must include material developments in post-breach investigations affecting the client's info. 0%

C and D 0%

Ethical Scenario #3

Answer: E

- ABA Rule 1.1 provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment [8] to Rule 1.1 was modified in 2012 to emphasize that this duty of competency includes a responsibility to understand the technology used in providing that representation.

- To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Ethical Scenario #3

Answer: E

- In Formal Opinion 483 (10/17/18), the ABA Standing Committee on Ethics and Professional Responsibility stated that the duty to provide competent representation necessarily requires both an understanding of the basic features of the relevant technology and deployment of that technology in a manner that will reasonably safeguard confidential client information.

- Formal Opinion 483 also concluded that, once a breach has occurred and client information has been accessed, the duty to notify affected clients includes "a continuing duty to keep clients reasonably apprised of material developments in post-breach investigations affecting the clients' information. See also, State Bar of Mich. Op. RI-09 (1991).

- Fla. Bar Ethics Op. 12-3 (1/25/13): refers to IA and NY ethics opinions for recommended scope of due diligence. Use of cloud computing to store confidential client information raises ethical concerns re: confidentiality, competence (in technology), and proper supervision of non-lawyers.

Ethical Scenario #3

Answer: E

- Other state ethics opinions allowing cloud computing and cloud storage if adequate safeguards are in place to ensure compliance with duties (and providing checklists of best practices):

  Maine Ethics Op. No. 207

  Penn. Formal Op. No. 2011-200

  N.C. 2011 Formal Op. No. 6

  Or. Formal Op. No. 2011-188

  Wash. Adv. Op. 2215 (2012)

Ethical Scenario #4

Salty Tax Services, Inc., a consulting firm that prepares numerous SUT tax returns for various clients, is thinking about upgrading their software systems to UpInTheAir, Inc., a new company that offers cloud-based electronic storage and software systems. UpInTheAir's systems would allow Salty to store Salty's client's confidential information for later insertion into the state SUT tax returns. UpInTheAir is privately-owned and their servers are potentially located outside the United States. Of course, UpInTheAir would have access to Salty's clients' confidential information, and of course, there is always the possibility that some really evil folks could hack into UpInTheAir's systems, thus potentially exposing Salty's client's confidential information. But man, oh, man, are these services cheap and user-friendly, and Salty intends to pass some of the savings on to their clients.

Is it ethical for Salty to hire UpInTheAir to store Salty's client's confidential SUT tax information?

A. No, not even at gunpoint.

B. Yes, because it is okay to send e-mails without encryption, use commercial copying companies, and send confidential information through the U.S. Postal service, and all those methods are also susceptible to the same risks.

C. Yes, but only if Salty obtains express permission in writing from each of their clients to use UpInTheAir's cloud-based systems.

D. Yes, but only if Salty remains alert to the possibility of data breaches, unauthorized access, or disclosure of client confidential information, and undertakes reasonable precautions in using those cloud-based systems, including making UpInTheAir sign a confidentiality agreement.

Salty Tax Services prepares SUT returns for clients. They upgrade to UpInTheAir (Up), a cloud storage co, to store clients SUT docs. Up is new, privately owned, and easily hacked. Salty is saving money so doesn't care. Violations?

No, not even at gunpoint.

0%

Yes, because it is okay to send email without encryption, use commercial copying companies, and send confidential information through the US Postal Service, and all of those methods are also susceptible to the same risks.

0%

Yes, but only if Salty obtains express permission in writing from each of their clients to use UpInTheAir's cloud-based systems.

0%

Yes, but only if Salty is alert to the possibility of data breaches, unauthorized access, or disclosure of client confidential information, undertakes reasonable precautions using those cloud-based systems, and makes Up sign confidentiality agreement.

0%

Ethical Scenario #4

Answer: **D.**

CPA Response: AICPA Rule Interpretation 1.700.040 presumes that confidentiality under the rule is threatened whenever a CPA uses a third-party service provider. Consequently, a CPA should either enter into a contract with the third-party service provider specifically to maintain the confidentiality of the covered taxpayer information or obtain consent from the client before disclosing tax return information to the provider.

Texas Bar "Short Answer": A lawyer must take reasonable precautions in the adoption and use of cloud-based technology for client document and data storage or the creation of client-specific documents that require client confidential information.

Ethical Scenario #5

Grimy Gulch produces authentic Texas components that some of his nationwide customers purchase for their own use, and others purchase for resale to others. You have been representing Grimy for many years, but due to new automated technology, you discover that, since he's been in business, Grimy has not been charging SUT on any large purchases and has been creating "fake" resale exemption certificates on behalf of his lazy customers who have either failed or refused to provide them. You know that his "manufactured" exemption certificates look authentic, but do not comply with the State's regulations. You also assume, however, that most, if not all, of Grimy's large sales were likely exempt, based on the just size of the orders.

What do you do?

A. Rat him out to the State auditors for being the slimy old Grimy that he is.
B. Do absolutely nothing about the situation, and continue working for him, because the transactions are probably exempt anyway, and no harm no foul. Besides, you are bound by client confidentiality rules and cannot rat him out.
C. Confront Grimy with his bad acts, and demand that he file amended sales tax returns, pay back taxes, interest, and penalties, and start collecting SUT in all instances in which the Buyer provides no exemption certificates.
D. Withdraw from the engagement.
E. A and D.

Grimy Gulch produces TX components used nationwide by his customers for themselves & for resale. You discover Grimy has not charged sales tax on purchases & creates fake resale exemption certs. But, you assume his sales are exempt. What to do?

Rat him out to the State auditors for being the slimy old Grimy that he is. 0%

Do absolutely nothing about the situation, and continue working for him, because the transactions are probably exempt anyway, and no harm no foul. Besides, you are bound by client confidentiality rules and cannot rat him out. 0%

Confront Grimy with his bad acts, and demand that he file amended sales tax returns, pay back taxes, interest, and penalties, and start collecting SUT in all instances in which the Buyer provides no exemption certificates. 0%

Withdraw from the engagement. 0%

A and D. 0%

Ethical Scenario #5

Answer: Either D or E, under all of the rules, depending on how you interpret the AICPA and MODEL rules, and believe they require you to turn Grimy in.

CPA Response: If your client has a material omission in their tax returns or engages in potentially fraudulent activity, it is the duty of the CPA to disclose the material omission or fraudulent activity to **the client**. The CPA should inform the client of potential penalties or other consequences if they do not correct the issue. **If the client refuses, then the CPA should consider withdrawing from the engagement**. With these types of situations, it is always best to discuss them with your malpractice carrier or legal counsel before continuing with the engagement.

Lawyer's Response: Under **Model Rule 4.1**, A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. **A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false**. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Ethical Scenario #6

Linda Looselips, outside counsel, and Betty Bigmouth, Company's in-house counsel, correspond frequently by e-mail at work during work hours about Company's sales tax audit, which is hotly contested. Linda and Betty are close friends, and in one of the e-mails, Linda says some disreputable, uncomplimentary, disturbing, and perfectly inflammatory things about the State's auditor, and Betty agrees. When Betty sends her equally awful response to Linda, Betty's auto-complete function accidentally sends the e-mail to Company's General Counsel, (Betty's boss), Company's Tax Director (Betty's client), the State's auditor, and the State auditor's counsel. Betty's attempt to recall the message is unsuccessful. What are the likely outcomes of this distribution of their disreputable and unprofessional exchange?

A. **Absolutely nothing, because Linda's and Betty's conduct is protected by First Amendment "Free Speech", and nothing bad can happen to either one.**
B. **Absolutely nothing, because Betty's act was an accident, and everyone will act in accordance with the legal and IPT ethical rules and just notify Betty about her blunder, slapping them both on their wrists and warning them not to do this again.**
C. **Betty will likely get in trouble because she is the one who erroneously sent the e-mail.**
D. **Linda might lose her client and be voted out of her law partnership if her Firm finds out about it. Depending on the facts, she might even be either reprimanded or disbarred.**
E. **C and D.**

Linda Looselips, outside counsel, & Betty Bigmouth, Co. counsel, email a lot about SUT audit of Co. Linda & Betty bad-mouths the DOR auditor and email goes to DOR auditor & counsel. Consequences?

Absolutely nothing because Linda & Betty's conduct is protected by First Amendment "Free Speech" and nothing bad can happen to either one of them. 0%

Absolutely nothing because Betty's act was an accident, and everyone will act in accordance with the legal and IPT ethical rules and just notify Betty about her blunder, slapping them both on their wrists and warning them not to do this again. 0%

Betty will likely get in trouble because she is the one who erroneously sent the e-mail. 0%

Linda might lose her client and be voted out of her law partnership if her Firm finds out about it. Depending on the facts, she might even be either reprimanded or disbarred. 0%

C and D. 0%

Ethical Scenario #6

Answer: E (C and D)

- Betty's blunder basically results in both Betty's and Linda's humiliation and shame for their grossly unprofessional conduct. Even though everyone is entitled to their own opinion, the inadvertent release of Betty's and Linda's personal opinions would likely be found to violate their state rules of professional responsibility, and could result in their disbarment. The State auditor or her counsel could be so offended, that they could file an ethical grievance with Betty's and Linda's State Bar authorities.

- In *Attorney Grievance Comm'n v. James Andrew Markey and Charles Leonard Hancock,* Misc. Docket AG No. 5, (September Term, 2019), the Maryland Appeals Court suspended indefinitely two government lawyers conducting such a private exchange conducted on their work e-mails addresses during work hours where the two lawyers made disparaging and inflammatory remarks about co-workers and colleagues over a period of years. Although the situation was discovered during a routine agency audit, it could just have easily been sent to unintended others accidentally. In this case, the Court held that this series of exchanges of unprofessional conduct caused damage to people's trust of the legal profession and the federal government, and thus, violated Maryland Lawyers' Rules of Professional Conduct, Section 8.4(d) (Conduct that is Prejudicial to the Administration of Justice), and Section 9.4(e) (Bias or Prejudice).

Ethical Scenario #7

Max is a tech savvy state tax lawyer for ABC , Inc. He has been studying the expanding use of artificial intelligence programs and has used an artificial intelligence program to answer tax issues that ABC, Inc. will encounter and will use the program to write file memos on uncertain tax positions. Max thinks he will save ABC a significant amount of money by reducing the need to hire more staff state tax lawyers. Can Max rely on artificial intelligence to make decisions on behalf of ABC, Inc.?

A. **Yes. Artificial intelligence is a useful tool in confirming the tax treatment of certain transactions and is part of the future of practicing lawyers and accountants.**

B. **No. Artificial intelligence is still an unproven resource and it is unclear where this technology will proceed in the future.**

C. **Yes, so long as Max independently confirms each authority cited to in the artificial intelligence program.**

D. **No. Max is required to review each tax issue on an independent basis and cannot rely on programs that are untested and unproven in the profession.**

Max is a tech savvy state tax lawyer. He has used an AI program to answer tax issues the DOR will encounter and will use the program to write file memos on UTPs. Max thinks he'll save the DOR by reducing hiring. Can Max rely on AI to make DOR decisions?

Yes. AI is a useful tool in confirming the tax treatment of transactions and is part of the future of practicing lawyer and accountants. 0%

No. AI is still an unproven tool and it is unclear where this technology will proceed in the future. 0%

Yes, so long as Max independently confirms each authority cited to in the artificial intelligence program. 0%

No. Max is required to review each tax issue on an independent basis and cannot rely on programs that are untested and unproven in the profession. 0%

Ethical Scenario #7

Answer: C

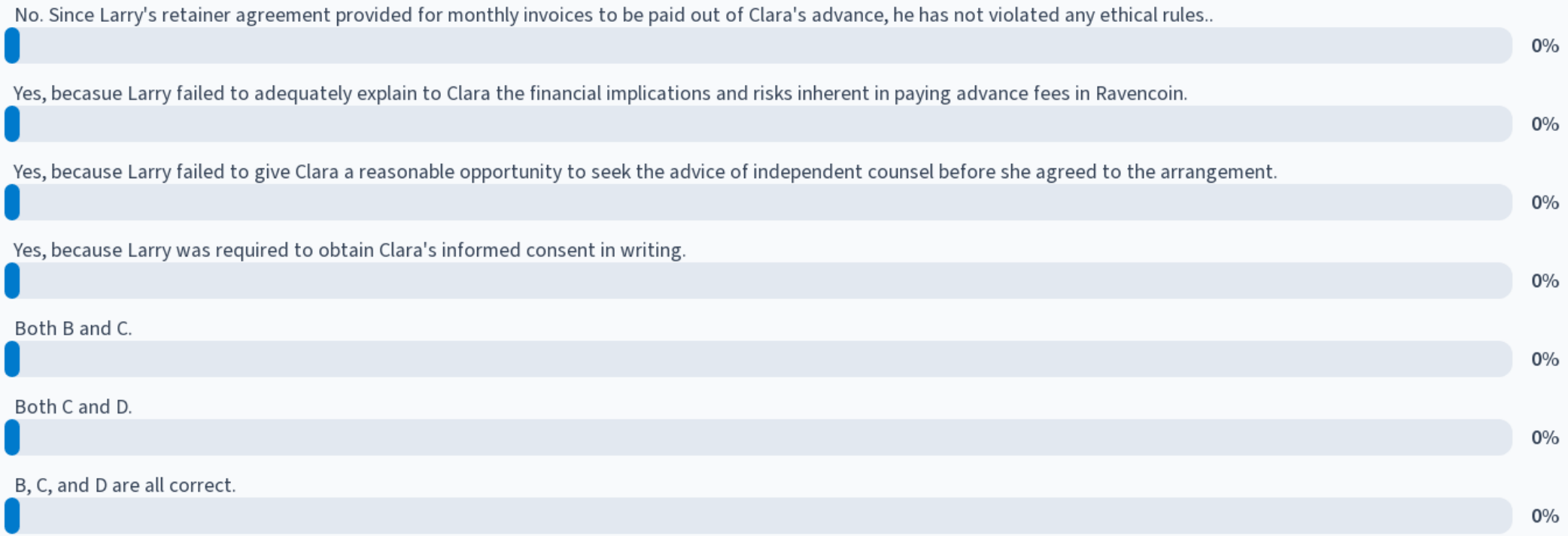
Explanation:
Mata v. Avianca, Inc., SDNY 22-01461 (5/26/23): Lawyer's use of AI resulted in creating fake cases that Lawyer relied upon. Lawyer used ChatGPT to create a brief and unknowingly (ChatGPT cited cases that did not exist) provided bogus quotes for such cases due to their reliance on ChatGPT. Opposing counsel could not find any of the authority, and Lawyer claims he was unaware of possibility that the content could be fake. Hearing held on June 8, 2023, on whether disciplinary action will be taken against Lawyer, and Lawyer was fined $5,000 by the Court.

Ethical Scenario #8

Larry's client is Clara, who retains Larry for a complex matter at an hourly rate of 5 Ravencoin (then worth $500). Per Larry's written retainer agreement, she provides a fee advance of 300 Ravencoin (then worth $30,000) which is deposited directly into his personal digital wallet. His retainer also states that Larry will provide monthly invoices and take all outstanding fees out of the advance, which must be periodically replenished. On February 14th, Larry emails Clara a detailed invoice for 200 Ravencoin for 40 hours of work. The next day, the value of Ravencoin increased five-fold from $100 to $500. Larry plans to sell all of cryptocurrency—including Clara's 200 Ravencoin that he had earned for services rendered (for which he will receive $100,000). Before he can sell the Ravencoin, Clara calls him, enraged, and demands the immediate return of her entire 300 Ravencoin advance. She argues that she has essentially paid Larry a fee of $2,500 per hour, which is both per se unreasonable under ABA Rule 1.5 (a) and rapacious. Have any ethical rules been violated by Larry?

A. No. Since Larry's retainer agreement provided for monthly invoices to be paid out of Clara's advance, he has not violated any ethical rules.
B. Yes, because Larry failed to adequately explain to Clara the financial implications and risks inherent in paying advance fees in Ravencoin.
C. Yes, because Larry failed to give Clara a reasonable opportunity to seek the advice of independent counsel in the transaction before she agreed to the arrangement.
D. Yes, because Larry was required to obtain Clara's informed consent in writing.
E. Both B and C.
F. Both C and D.
G. B, C, and D.

Larry's client, Clara, provides Larry a fee advance of 300 Ravencoin (worth $30K/$100 each) deposited in his digital wallet per retainer. Larry bills Clara 200 Ravencoin for 40 hrs work. Price goes up 5X. Larry plans to sell. Clara objects. Issues?



Ethical Scenario #8

Answer: G. (B, C, and D)

Payment of fees in cryptocurrency is more akin to payment in property than payment in fiat currency. The financial implications of paying for a lawyer's services in a cryptocurrency will vary depending on the fee arrangement. A client who receives a bill for services rendered and elects to immediately transfer bitcoins to an attorney's wallet can be certain of the value of the payment, while a client who pays a lawyer an advance for services to be performed cannot predict the value of that cryptocurrency in a week, much less a month or a year. Therefore, the reasonableness of a fee agreement involving cryptocurrency will depend not only on the terms of the fee agreement itself and whether or not payment is for services rendered or in advance, but also on whether and how well the lawyer explains the nature of a client's particularized financial risks, in light of both the agreed fee structure and the inherent volatility of cryptocurrency.

Ethical Scenario #8

Answer: G. (B, C, and D)

Explanation: **N.C. State Bar, Formal Op. 2019-5 Receipt of Virtual Currency in Law Practice (October 2019)**

A lawyer may NOT accept cryptocurrency as an advance payment.

The Rule cites the difficulty of safekeeping crypto under Rule 1.15

> "The methods in which virtual currency are held are not yet suitable places of safekeeping for the purpose of protecting entrusted client property under Rule 1.15-2(d). Rule 1.15-2(d)'s reference to "a safe deposit box or other suitable place of safekeeping" demonstrates that the "suitable place of safekeeping" referenced in the Rule is one that ensures confidentiality for the client and provides exclusive control for the lawyer charged with maintaining the property, as well as the ability of the client or lawyer to rely on institutional backing to access the safeguarded property through appropriate verification should the lawyer's ability to access the property disappear (be it through the lawyer's misplacement of a physical key, or the lawyer's unavailability due to death or disability)."

Ethical Scenario #8

Answer: G. (B, C, and D)

Explanation: DC Bar Ethics Opinion 378: Acceptance of Cryptocurrency as Payment for Legal Fees (cont.)

- A lawyer who accepts cryptocurrency as an advance fee must ensure that the fee arrangement is:
  - Reasonable
  - Objectively fair to the client
  - Agreed to only after the client has been informed in writing of its implications and given the opportunity to seek independent counsel

Ethical Scenario #9

Your Department of Revenue, in its efforts to crack down on waste, fraud, and abuse, has retained and deployed **Friendly, Reliable, Accurate and Useful Fraud Detector ("FRAUD")**, a cloud-based system that employs artificial intelligence (AI), robotic process automation (RPA), and machine learning (ML) to integrate with its income tax data bases. This has allowed your agency's **Director of Compliance** to apply FRAUD to detect individuals who might be guilty of fraud and other illegal activities. Your **Commissioner** has asked your IT Director to run a preliminary list of very high-income individuals who are likely to have committed fraud. Your **IT Director** comes to you, fearing that the **Commissioner** (who was appointed by the sitting Governor) wants to provide the list to the Governor for use in his next political campaign. The **IT Director**, however, has no proof of the Commissioner's motive, other than it is generally the **Compliance Director**, his peer, who makes such requests, that are clearly made for Departmental use only. Also, it is commonly known that the **IT Director** is prone to believe and spread idle gossip about politics, and in general, is full of balderdash. What do you do?

A. **You do nothing, because you know that your Commissioner is ethical and honest, and the Governor is ethical and honest, and it is your ethical responsibility to represent the Commissioner.**

B. **You do nothing, because there is no proof of the Commissioner's ill intent, and she is legally entitled to request and review all confidential taxpayer information.**

C. **Because the information in question is so highly confidential and sensitive, you take the matter seriously and risk your job by approaching the Commissioner to ask her about her intentions for making that request, even though you believe that just making the inquiry will offend her. You also realize that if the Commissioner merely waives you off by stating that the IT Director is full of balderdash, you're going to have to investigate the matter further to satisfy yourself as to why the Commissioner needs such a list and get her assurance that she is not going to wrongfully use the list for political purposes.**

D. **In this situation, as a government lawyer, your client is the Department or the State, and not the Commissioner, and you have to take measures against wrongful disclosure of confidential taxpayer information, no matter what.**

Your DOR has deployed FRAUD, a cloud-based system that uses AI, RPA, and ML to integrate with its income tax databases. Your Commissioner asked IT to run list of possible TP frauds. IT fears DOR will give list to Gov. for political reasons. What to do?

You do nothing because you know your Commissioner is ethical/honest & the Gov is ethical/honest, and it's YOUR ethical responsibility to represent the Commissioner.

0%

You do nothing because there is no proof of the commissioner's ill intent, and she is legally entitle to request and review any and all confidential taxpayer information.

0%

You risk your job by asking Commissioner of her intentions. If she says not to worry, the IT Dir is full of balderdash, you must investigate further to be sure Commissioner is being truthful.

0%

As DOR lawyer, your client is the DOR, not the Commissioner, and you have to take measure against wrongful disclosure of confidential taxpayer information, no matter what.

0%

Ethical Scenario #9

Answer: D.

This hypothetical begs the question, who is your client?

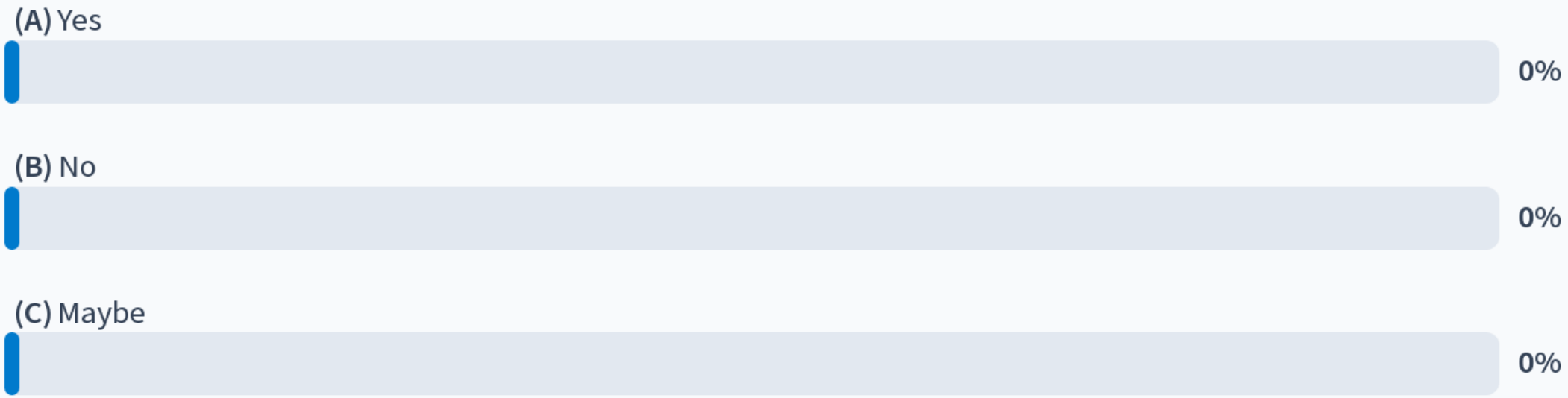
Under **ABA Model Rule 1.13**, an attorney for an entity represents the organization acting through its duly authorized constituents. The rule, however, makes an exception if the lawyer knows that if the Commissioner may be engaged in action, intends to act, or refuses to act in a manner that might reasonably be imputed to the Department and result in substantial injury to the Department, then the lawyer shall proceed as is reasonably necessary in the best interest of the Department or State. Normally, the Rule permits you to go over the Commissioner's head if she refuses to explain to you why she needs such highly confidential and sensitive taxpayer information, but in this hypothetical, taking the matter to the Governor might not be very productive. Public officials are held to a high responsibility to act in the public interest, and the relationship between an attorney for the Department and a high-ranking government official like the Commissioner, acting in her official capacity, must be subordinated to the public interest in transparency, leaving the government lawyer duty-bound to investigate potential criminal violations, even if they may appear to be frivolous. And as we all know, wrongful disclosure of confidential tax information is a felony under most states' laws.

Ethical **Scenario #10**

Is it ethical for a DOR attorney to accept an elegant dinner at Nashville's most exclusive and expensive restaurant from a Taxpayer or her representative?

A. **Yes**
B. **No**
C. **Maybe**

Is it ethical for a DOR attorney to accept an elegant dinner at Nashville's most exclusive and expensive restaurant from a Taxpayer or her representative?



Ethical Scenario #10

Answer: C

- If the dinner is going to create an actual or apparent conflict of interest, you should not accept the dinner. Customary family and social occasions are generally okay.

- Nonetheless, if you expect the auditor to take an official action that benefits you or a client, or even may result in referrals to you, or is intended to influence the auditor's decisions, you should not buy the dinner.

- The applicable Rules are 1.2(d), 3.4(a), 3.5(a), 7.2, 7.3. Consider also: NYC Charter, Chapter 68, section 2604(b)(4),(5); NY Public Officers Law section 73; NY Public Officers Law section 74; NY Penal Law Part 3, Title L, Article 200.

Ethical Scenario #11

Jerry Pence, a trial lawyer from Wyoming, has never lost a criminal case before a jury either as a prosecutor or a defense attorney, and has not lost a civil case since 1969. Jerry loves Social Media and downloads a lot of social media apps on his smartphone. Sometimes, he is asked to give consent for the app to access the "contacts" on his smartphone. Jerry's contacts include personal, family, and client contacts. May Jerry give consent for an app to access the contacts on his smartphone?

A. **Yes. Giving consent to an app to access his contacts can only increase his standing on social media and gain him followers.**
B. **No. If Jerry determines that any of his contacts include a client whose identity or other information is confidential, he may not consent to share contacts with an app.**
C. **No. If Jerry determines that any of his contacts include a client whose identity or other information is confidential, he may not consent to share the contacts with an app even if he concludes that no human being will view that confidential information.**
D. **Yes. If Jerry determines that any of his contacts include a client whose identity or other information is confidential, he may consent to share the contacts with an app if he concludes that the information will not be sold or transferred to additional third parties without the client's consent.**

Jerry Pence, a trial lawyer from Wyoming, has not lost a civil case since 1969. Jerry loves Social Media and downloads a lot of social media apps on his smart phone. Sometimes, he gives consent to access his contacts, both personal and clients. May he?

Yes. Giving consent to an app to access his contacts can only increase his standing on social media and gain him followers!

0%

No. If Jerry determines that any of his contacts include a client whose identity or confidential info is exposed, he may not consent.

0%

No. If Jerry determines that any contact includes a client whose info is confidential, he may not consent to share with an app even if he concludes no human will view it.

0%

Yes. If Jerry determines that any contact includes a client whose info is confidential, he may share with app if he concludes the info will not be sold to a third party w/o client consent.

0%

Ethical Scenario #11

Answer: D

NY Committee on Professional Ethics Opinion 1240 (April 8, 2022)

- If "contacts" on a lawyer's smartphone include any client whose identity or other information is confidential under Rule 1.6, then the lawyer may not consent to share contacts with a smartphone app unless the lawyer concludes that no human being will view that confidential information, and that the information will not be sold or transferred to additional third parties, without the client's consent. (ABA Rule: 1.6.)

- Contacts stored on a smartphone typically include one or more email addresses, work or residence addresses, and phone numbers (collectively sometimes called "directory information"), but contacts often also include additional non-directory information (such as birth date or the lawyer's relationship to the contact).

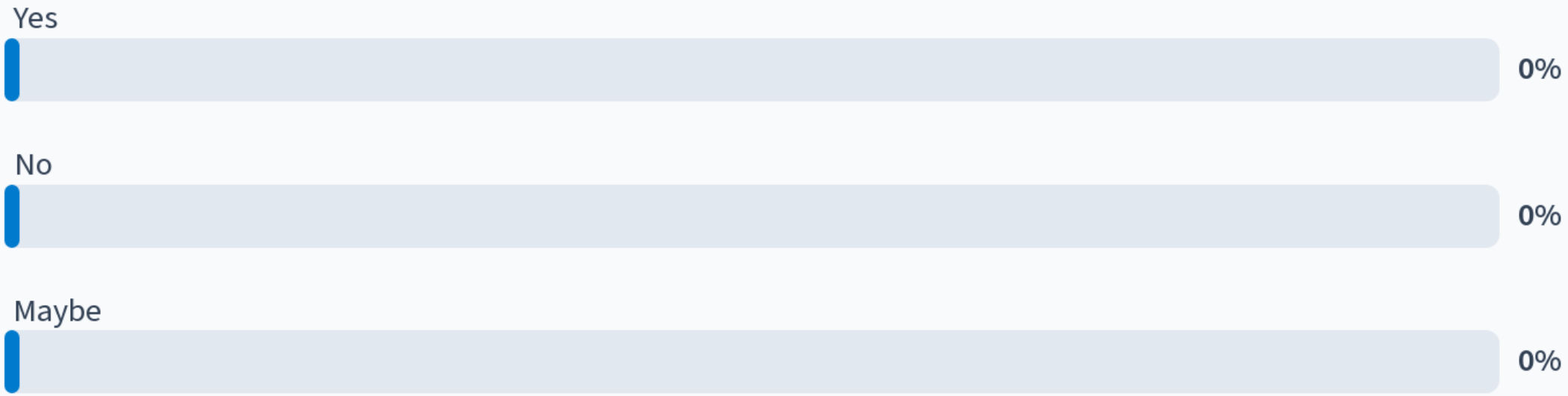
- Social media apps may seek access to this information to solicit more users to the platform or to establish links between users and enhance the user experience. Apps which sell products or services may seek such access to promote additional sales. Apps that espouse political or social beliefs may seek such access to disseminate their views. These are but three examples of how an attorney's contacts might be exploited by an app, but there are more, and likely many more to come.

Ethical Scenario #12

Is it ethical for a DOR attorney to accept from a taxpayer tickets to a live television show that are difficult to get (think Jimmy Fallon or Steven Colbert before the writers' strike) but are free, if you can get them??

1. **Yes**
2. **No**
3. **Maybe**

Is it ethical for a DOR attorney to accept from a taxpayer tickets to a live television show that are difficult to get (think Jimmy Fallon or Steven Colbert) but are free, if you can get them?



Ethical Scenario #12

Answer: ?

- The price you pay (or don't pay) for the tickets does not resolve the ethical issue. The tickets have value, and, if they are going to create an actual or apparent conflict of interest, you should not accept them from the taxpayer. Customary family and social occasions are generally okay. If you are expected to take an official action that benefits the taxpayer or her client, or is intended to influence your decisions, you should not accept the tickets.

- Also, assuming someone would pay more than $15 or $50 for the tickets, depending on the applicable law, they will not fit the NYS and NYC *de minimis* gift definitions.

- The applicable Rules are 1.2(d), 3.4(a), 3.5(a), 7.2, 7.3. Consider also: NYC Charter, Chapter 68, section 2604(b)(4),(5); NY Public Officers Law section 73; NY Public Officers Law section 74; NY Penal Law Part 3, Title L, Article 200.

Ethical Scenario #13

After her client XYZ Corp's state corporate income tax return was filed, Vicky Virtual discovers a significant error that would result in $10 million in additional income. Correcting the error will increase tax liability for the year. Must Vicky bring the error to XYZ Corp's attention? Must Vicky disclose the error to her client or the Department?

A. No. Vicky is not required to inform her client or the Department of the error.
B. Vicky must inform her client of the error but is not required to inform the Department.
C. Vicky must inform both her client and the Department of the error.
D. Vicky must inform the client of the error and must urge the client to file an amended return.

After Vicky's client XYZ's income tax return was filed, Vicky discovers an error that caused $10M in added income. Correcting the error will increase XYZ's liability. Must she tell XYZ? Must she disclose to DOR?

Vicky is not required to inform her client or the DOR of the error. 0%

Vicky must inform the client of the error, but is not required to inform the DOR. 0%

Vicky must inform both her client and the DOR. 0%

Vicky must inform the client and must urge the client to file an amended return. 0%

Ethical Scenario #13

Answer: B.

- There is general agreement that Vicky must disclose the existence of the error to her client; however, she may not disclose her error to the Department absent client consent.

- ABA Model Rules of Professional Conduct, Rule 1.4(a)(3) (communication) provides that a lawyer shall keep the client reasonably informed about the status of the matter.

- Pursuant to ABA Rule 1.4(b), Vicky may advise the client to file an amended return but may not require them to do so. *See, e.g.*, Rule 1.4(b) ("lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation").

- Vicky is not required to disclose the error to the Department absent client consent. This is because pursuant to ABA Rule 1.6(a), disclosure absent client consent is permitted only in limited circumstances, and this isn't one of them.

Ethics For SALT Professionals As We Face The Next Thirty Years

Questions?

Thank you!

Ethics Standards - ABA

Ethics Standards - ABA

Standards of the American Bar Association

- Model Rules of Professional Conduct. Scope, Section 14 provides:
  - The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline.
  - Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion.
  - Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should.“
  - Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

Select ABA Model Rules Applicable to Tax Professionals

- **ABA** **Topic**
- Rule 1.1 Competence
- Rule 1.15 Safekeeping Property
- Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer
- Rule 1.3 Due Diligence
- Rule 1.4 Communication
- Rule 1.5 Fees
- Rule 1.6 Confidentiality of Information
- Rule 1.7 Conflict of Interest: Current Clients
- Rule 1.8 Conflict of Interest: Current Clients: Specific Rules
- Rule 5.2 Oversight of subordinate attorneys
- Rule 5.3 Oversight of non-lawyer personnel
- Rule 5.5 Unauthorized Practice of Law

Select ABA Model Rules Applicable to Tax Professionals

Competence

Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Select ABA Model Rules Applicable to Tax Professionals

- **Due Diligence**
  - **Rule 1.3** A lawyer shall act with reasonable diligence and promptness in representing a client.

- **Confidentiality of Information**
  - **Rule 1.6 (a)** A lawyer ***shall not*** reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

Select ABA Model Rules Applicable to Tax Professionals

Rule 1.5: Fees Client-Lawyer Relationship

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(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;

Select ABA Model Rules Applicable to Tax Professionals

Rule 1.5: Fees Client-Lawyer Relationship (cont.)

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(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.

Select ABA Model Rules Applicable to Tax Professionals

Rule 1.6 (b): Confidentiality of Information

Rule 1.6 (b) A lawyer ***may*** reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);

(2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

Select ABA Model Rules Applicable to Tax Professionals

Confidentiality of Information (cont.)

Rule 1.6 (b) A lawyer ***may*** reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest if the revealed information would not prejudice the client.

Select ABA Model Rules Applicable to Tax Professionals

Confidentiality of Information

Rule 1.6 (c) A lawyer ***shall*** reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

Select ABA Model Rules Applicable to Tax Professionals

Conflicts of Interest: Specific Rules

Rule 1.8

(a) A lawyer **shall not** enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is informed in writing that the client may seek the advice of independent legal counsel on the transaction, and is given a reasonable opportunity to do so; and

(3) the client gives **informed consent**, **in a writing signed by the client**, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Select ABA Model Rules Applicable to Tax Professionals

Attorney Oversight – Responsibility of Supervisory Lawyer

Rule 5.1

a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

   1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

   2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. Rule 5.2:

      a. A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

      b. A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Select ABA Model Rules Applicable to Tax Professionals

Attorney Oversight – Supervision of Subordinate Attorneys

Rule 5.2:

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Select ABA Model Rules Applicable to Tax Professionals

Attorney Oversight: Responsibilities Regarding Supervision of Nonlawyers

Rule 5.3

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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STATE AND LOCAL TAX FORUM

Select ABA Model Rules Applicable to Tax Professionals

Unauthorized Practice of Law

Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

1) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
2) A lawyer who is not admitted to practice in this jurisdiction shall not:
    1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
    2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
3) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
    1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
    2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
    3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
    4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
4) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:
    1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or
    2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.
5) For purposes of paragraph (d):
    1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,
    2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this Rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

Select ABA Formal Opinions

Select ABA Formal Opinions

ABA Formal Opinion 378: Acceptance of Cryptocurrency as Payment for Legal Fees--Conclusion (June 2020)

We do not perceive any basis in the Rules of Professional Conduct for treating cryptocurrency as a uniquely unethical form of payment. Cryptocurrency is, ultimately, simply a relatively new means of transferring economic value, and the Rules are flexible enough to provide for the protection of clients' interests and property without rejecting advances in technologies. So long as the fee agreement between a lawyer and her client is objectively fair and reasonable (and otherwise complies with Rules 1.5 and 1.8), and the lawyer possesses the requisite knowledge to competently safeguard the client's digital currency, there is no prohibition against a lawyer accepting cryptocurrency from or on behalf of a client.

Select ABA Formal Opinions

ABA Formal Opinion 477R: Securing Communication of Protected Client Information--Conclusion
(Revised May 22, 2017)

A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security.

Select ABA Formal Opinions

ABA Formal Opinion 477R: Securing Communication of Protected Client Information--Conclusion (Revised May 22, 2017) (cont.)

Rule 1.1 requires a lawyer to provide competent representation to a client. Comment [8] to Rule 1.1 advises lawyers that to maintain the requisite knowledge and skill for competent representation, a lawyer should keep abreast of the benefits and risks associated with relevant technology. Rule 1.6(c) requires a lawyer to make "reasonable efforts" to prevent the inadvertent or unauthorized disclosure of or access to information relating to the representation.

Select ABA Formal Opinions

ABA Formal Opinion 495: Lawyers Working Remotely--Conclusion (December 16, 2020)

Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction. This practice may include the law of their licensing jurisdiction or other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. Having local contact information on websites, letterhead, business cards, advertising, or the like would improperly establish a local office or local presence under the ABA Model Rules.

Select ABA Formal Opinions

ABA Formal Opinion 495: Lawyers Working Remotely--Conclusion (December 16, 2020) (cont.)

The purpose of Model Rule 5.5 is to protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible as a lawyer to a local jurisdiction where the lawyer is physically located, but not licensed. The Committee's opinion is that, in the absence of a local jurisdiction's finding that the activity constitutes the unauthorized practice of law, a lawyer may practice the law authorized by the lawyer's licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed if the lawyer does not hold out the lawyer's presence or availability to perform legal services in the local jurisdiction or actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.

Select ABA Formal Opinions

ABA Formal Opinion 496: Responding to Online Criticism--Conclusion (January 13, 2021)

Lawyers are frequent targets of online criticism and negative reviews. ABA Model Rule of Professional Conduct 1.6(a) prohibits lawyers from disclosing information relating to any client's representation or information that could reasonably lead to the discovery of confidential information by another. A negative online review, alone, does not meet the requirements for permissible disclosure under Model Rule 1.6(b)(5) and, even if it did, an online response would exceed any disclosure permitted under the Rule.

Lawyers who are the subject of online criticism may request that the website or search engine host remove the information but may not disclose information relating to any client's representation, or information that could reasonably lead to the discovery of confidential information by others. Lawyers should consider ignoring a negative post or review because responding may draw more attention to it and invite further response from an already unhappy critic. Lawyers who choose to respond online must not disclose information that relates to a client matter or that could reasonably lead to the discovery of confidential information by others. Lawyers may post an invitation to contact the lawyer privately to resolve the matter. Another permissible response would be to indicate that professional considerations preclude a response. A lawyer may respond directly to a client or former client who has posted criticism of the lawyer online but must not disclose information relating to that client's representation online.

Select ABA Formal Opinions

ABA Formal Opinion 497: Conflicts Involving Materially Adverse Interests--Conclusion (February 10, 2021)

"Material adverseness" under Rule 1.9(a) and Rule 1.18(c) exists where a lawyer is negotiating or litigating against a former or prospective client or attacking the work done for the former client on behalf of a current client in the same or a substantially related matter. It also exists in many but not all instances, where a lawyer is cross-examining a former or prospective client. "Material adverseness" may exist when the former client is not a party or a witness in the current matter if the former client can identify some specific material legal, financial, or other identifiable concrete detriment that would be caused by the current representation. However, neither generalized financial harm nor a claimed detriment that is not accompanied by demonstrable and material harm or risk of such harm to the former or prospective client's interests suffices.

Select ABA Formal Opinions

ABA Formal Opinion 498: Virtual Practice--Conclusion (March 10, 2021)

The ABA Model Rules of Professional Conduct permit virtual practice, which is technologically enabled law practice beyond the traditional brick-and-mortar law firm.1 When practicing virtually, lawyers must particularly consider ethical duties regarding competence, diligence, and communication, especially when using technology. In compliance with the duty of confidentiality, lawyers must make reasonable efforts to prevent inadvertent or unauthorized disclosures of information relating to the representation and take reasonable precautions when transmitting such information. Additionally, the duty of supervision requires that lawyers make reasonable efforts to ensure compliance by subordinate lawyers and nonlawyer assistants with the Rules of Professional Conduct, specifically regarding virtual practice policies.

Select ABA Formal Opinions

ABA Formal Opinion 499: Passive Investment in Alternative Business structures--Conclusion (September 8, 2021)

A lawyer admitted to practice law in a Model Rule jurisdiction may make a passive investment in a law firm that includes nonlawyer owners operating in a jurisdiction that permits such investments provided that the investing lawyer does not practice law through the ABS, is not held out as a lawyer associated with the ABS, and has no access to information protected by Model Rule 1.6 without the ABS clients' informed consent or compliance with an applicable exception to Rule 1.6 adopted by the ABS jurisdiction. With these limitations, such "passive investment" does not run afoul of Model Rule 5.4 nor does it, without more, result in the imputation of the ABS's client conflicts of interest to the investing Model Rule Lawyer under Model Rule 1.10. The fact that a conflict might arise in the future between the Model Rule Lawyer's practice and the ABS firm's work for its clients does not mean that the Model Rule Lawyer cannot make a passive investment in the ABS. If, however, at the time of the investment the Model Rules Lawyer's investment would create a personal interest conflict under Model Rule 1.7(a)(2), the Model Rule Lawyer must refrain from the investment or appropriately address the conflict pursuant to Model Rule 1.7(b).

Select ABA Formal Opinions

ABA Formal Opinion 500: Language Access in the Client-Lawyer Relationship--Conclusion (October 6, 2021)

A lawyer's fundamental obligations of communication and competence are not diminished when a client's ability to receive information from or convey information to a lawyer is impeded because the lawyer and the client do not share a common language, or owing to a client's non-cognitive physical condition, such as a hearing, speech, or vision disability. Under such circumstances, a lawyer may be obligated to take measures appropriate to the client's situation to ensure that those duties are properly discharged. When reasonably necessary, a lawyer should arrange for communications to take place through an impartial interpreter or translator capable of comprehending and accurately explaining the legal concepts involved, and who will assent to and abide by the lawyer's duty of confidentiality. In addition, particularly when there are language considerations affecting the reciprocal exchange of information, a lawyer must ensure that the client understands the legal significance of translated or interpreted communications and that the lawyer understands the client's communications, bearing in mind potential differences in cultural and social assumptions that might impact meaning.

Select State Ethics Rules & Opinions

Select State Ethics Rules & Opinions

DC Ethics Opinion 300: Acceptance of Ownership Interest In Lieu of Legal Fees--Conclusion

It is not unethical for a lawyer to receive an ownership interest in a corporate client as compensation for legal services, so long as the fee arrangement is a reasonable one, is objectively fair to the client, and has been agreed to by the client after being informed of its implications and given an opportunity to seek independent counsel on the fee arrangement. A lawyer's current or expected ownership interest in a client may create a conflict of interest that may prevent the lawyer from undertaking the representation unless informed client consent is received.

Select State Ethics Rules & Opinions

DC Ethics Opinion 378: Acceptance of Cryptocurrency as Payment for Legal Fees--Conclusion

It is not unethical for a lawyer to accept cryptocurrency in lieu of more traditional forms of payment, so long as the fee is reasonable. A lawyer who accepts cryptocurrency as an advance fee on services yet to be rendered, however, must ensure that the fee arrangement is reasonable, objectively fair to the client, and has been agreed to only after the client has been informed in writing of its implications and given the opportunity to seek independent counsel. Additionally, a lawyer who takes possession of a client's cryptocurrency, either as an advance fee or in settlement of a client's claims, must also take competent and reasonable security precautions to safeguard that property.

Select State Ethics Rules & Opinions

NC State Bar 2019 Formal Ethics Opinion 5: Receipt of Virtual Currency in Law Practice (October 25, 2019)

Opinion rules that a lawyer may receive virtual currency as a flat fee for legal services, provided the fee is not clearly excessive and the terms of Rule 1.8(a) are satisfied. A lawyer may not, however, accept virtual currency as entrusted funds to be billed against or to be held for the benefit of the lawyer, the client, or any third party.

Select State Ethics Rules & Opinions

N.J. Advisory Committee on Professional Ethics Opinion 739: Lawyers Who Include Clients on Group Emails and Opposing Lawyers Who "Reply All"--Conclusion (March 10, 2021)

Accordingly, the Committee finds that lawyers who include their clients in the "to" or "cc" line of a group email are deemed to have provided informed consent to a "reply all" response from opposing counsel that will be received by the client. If the sending lawyer does not want opposing counsel to reply to all, then the sending lawyer has the burden to take the extra step of separately forwarding the communication to the client or blind-copying the client on the communication so a reply does not directly reach the client.

Select State Ethics Rules & Opinions

Nev. S. C .R. 42.1: Practice of Attorneys Admitted in Nevada but not Maintaining Nevada Offices--Conclusion (August 12, 2022)

1. **Application of rule.** This rule applies to an attorney who is admitted to practice in Nevada but who does not maintain an office in Nevada. A post office box or mail drop location shall not constitute an office under this rule.

2. Association or designation for service. Upon filing any pleadings or other papers in the courts of this state, an attorney who is subject to this rule shall either associate a licensed Nevada attorney maintaining an office in Nevada or designate a licensed Nevada attorney maintaining an office in the county wherein the pleading or paper is filed, upon whom all papers, process, or pleadings required to be served upon the
attorney may be so served, including service by hand-delivery or facsimile transmission. The name and office address of the associated or designated attorney shall be endorsed upon the pleadings or papers filed in the courts of this state, and service upon the associated or designated attorney shall be deemed to be service upon the attorney filing the pleading or other paper.

3. The requirements of this rule are in addition to any rules of practice of the courts of this state.

Select State Ethics Rules & Opinions

State Bar of Nevada Ethics and Professional Responsibility Formal opinion No. 59: Coworking Office Space-Conclusion

Utilization of a coworking office space for the practice of an attorney admitted in Nevada but residing outside of Nevada constitutes maintaining an office in Nevada for purposes of SCR 42.1. An attorney admitted in Nevada but residing outside of Nevada and using a coworking office space in Nevada is not subject to the advertising filing requirements of NRPC 7.2A with regard to the attorney's business cards, letterhead, and website.

Select State Ethics Rules & Opinions

NYS Committee on Professional Ethics Opinion 1102: Insured Counsel; Sharing Office Space with Nonlawyers--Conclusion (July 15, 2016).

The lawyers in an insurance company's in-house department who provide legal services to the insurance company's policy holders must take reasonable steps to protect client confidential information of the insureds and to avoid conflicts of interest and must comply with other applicable Rules.

Rules: Rule 1.0(h), 1.1, 1.6(a) & (c), 1.8(f), 5.3

Select State Ethics Rules & Opinions

NYS Committee on Professional Ethics Opinion 1223: Dual Practice; Rental of Office Space--Conclusion (May 12, 2021)

Renting law office space for lawful purposes is a permitted nonlegal business for a lawyer. Where a lawyer who owns a nonlegal services business is providing nonlegal services to persons who are not clients, Rule 5.7(a)(3) provides that the nonlegal services entity will be subject to the Rules by virtue of Rule 5.7 only if the person receiving the services could reasonably believe that the nonlegal services are the subject of a client-lawyer relationship.

Rules: 5.7(a)(3) and (4), 7.1(h)

Select State Ethics Rules & Opinions

NYS Committee on Professional Ethics Opinion 1239: An Attorney's Ethical Obligation When a Court Orders Forensic Analysis of Hard Drive Containing Client Confidential Information--Conclusion (March 22, 2022)

An attorney in receipt of a court order directing production of his hard drive containing the confidential information of clients who have not waived privilege or consented to disclosure, has the obligation to advise non-waiving clients of the existence of the court order. Absent the clients' informed consent to waiver of the attorney-client privilege and consent to disclosure, an attorney must consult with the non-waiving clients about the reasonable steps necessary to avoid or limit production of confidential information and undertake those steps before complying with the court order.

Rules: 1.0(j), 1.4 (a)(1), 1.4(a)(3), 1.6(a), 1.6(b)(6)

Select State Ethics Rules & Opinions

NYS Committee on Professional Ethics Opinion 1240: Duty to Protect Client Information stored on a Lawyer's smartphone--Conclusion (April 8, 2022)

If "contacts" on a lawyer's smartphone include any client whose identity or other information is confidential under Rule 1.6, then the lawyer may not consent to share contacts with a smartphone app unless the lawyer concludes that no human being will view that confidential information, and that the information will not be sold or transferred to additional third parties, without the client's consent.

Rules: 1.6

Select State Ethics Rules & Opinions

NYS Committee on Professional Ethics Opinion 1241: New York Attorney with Out-of-State Office; Attorney Advertising and Letterhead --Conclusion (May 31, 2022)

A lawyer who is admitted to practice in both New York and Florida, but whose only physical office is in Florida, may state on the letterhead of his Florida office that he is "admitted to the New York Bar," provided that this statement does not violate the applicable Rules of Professional Conduct.

Rules: 1.0(a), 7.1(a), 7.5(a), 8.4(c) & 8.5(b)

Select State Ethics Rules & Opinions

Texas Ethics No. 692: Duty to Correct False Statements by Client During Deposition--Conclusion (October 6, 2021)

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer does not have a duty to correct intentionally false statements made by the client while being cross-examined by the opposing party's counsel during a deposition. Nevertheless, the lawyer should urge the client to correct the false statements, including by explaining the potential civil and criminal ramifications of false testimony. If the client refuses, the lawyer may (but is not required to) withdraw from the client representation if permitted by the Rules. If the lawyer does not withdraw, the lawyer is not required to disclose the true facts but may not use the false deposition testimony in any way to advance the client's case.

Ethics Standards - AICPA

Ethics Standards - AICPA

- AICPA Code of Professional Conduct Structure
- Introduction
  - Section 50 – Principles of Professional Conduct
  - Section 90 – Rules: Applicability and Definitions
  - Section 100 – Independence, Integrity, and Objectivity
  - Section 200 – General Standards Accounting Principles
  - Section 300 – Responsibilities to Clients
  - Section 400 – Responsibilities to Colleagues
  - Section 500 – Other Responsibilities and Practices

  - ET Appendixes
  - ET Topical Index
- http://www.aicpa.org/about/code/index.htm

Ethics Standards - AICPA

AICPA Code of Professional Conduct Framework

- Maintain the good reputation of the profession.
- Serve the public interest.
- Perform services with:
  - Integrity.
  - Due care
  - Professional competence
  - Independence & Objectivity
  - Confidentiality
  - Dissociate from others who behave unethically.

Ethics Standards - AICPA

AICPA Code of Professional Conduct Principles

The Principles guide members in the performance of their professional responsibilities:

- Article I – Responsibilities
- Article II – The Public Interest
- Article III – Integrity
- Article IV – Objectivity and Independence
- Article V – Due Care
- Article VI – Scope and Nature of Services

Ethics Standards - AICPA

AICPA Code of Professional Conduct:

- Article III: Integrity
  - Integrity is an element of character fundamental to professional recognition.
  - Integrity is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.
  - 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 also requires a member to observe the principles of objectivity and independence and of due care.

Ethics Standards - AICPA

Professional Standards for Ethics - AICPA

- Statement on Standards for Tax Services
  - ("SSTS" or "Standards")
    - SSTS and interpretations issued thereunder reflect the AICPA's standards of tax practice and delineate members' responsibilities to taxpayers, the public, the government, and the profession.
    - Ongoing process to articulate standards.
    - Promulgated by the Tax Executive Committee.