A Publication for Accounting Professionals

ACCOUNTANTS' UPDATE

JANUARY 2018

The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.

Top 5 Ways A CPA Can Get Sued

Number 1 – Suing your client for fees.

This is a guaranteed cross complaint for malpractice, and more importantly, your insurance policy might not cover a counter suit to your suit for fees. So think twice, and call your attorney or risk adviser for guidance.

Number 2 – Advising both parties to a transaction, or helping them to resolve a dispute.

Many times CPAs are asked to help clients resolve disputes. Don't do it! Friendly divorcing couples don't always stay friendly, and guess who they blame when things don't work out the way they had hoped. The CPA. The same is true with business disputes. Disputes between owners or partners often result in advice that is perceived by one or more of them as favoring one partner to the detriment of another. This in turn results in malpractice claims.

Number 3 – Participating in business deals with clients.

Investing in business deals with clients is often a mistake, especially when the CPA also provides professional services to the business. Everyone is usually happy as long as the deal performs well. The CPA is perceived by the client as a competent advisor with the client's best

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interests at heart. If the deal falls apart or takes a severe downturn, however, the client's perception of the CPA may change. The CPA appears to no longer have the client's best interests at heart, and juries tend to sympathize with clients, especially with the benefit of hindsight and all the facts laid out by a skilled attorney. The CPA is portrayed as the financial expert who sacrificed the best interests of his client to benefit himself. Also, disclosing a conflict of interest to the client, while helpful, doesn't solve the problem, even if the client signs the disclosure. It can be later argued that the client's consent was not "informed" by a third party (such as an attorney). Don't get too comfortable with disclosure as a form of protection. In the end, the question is whether there is a perception that the CPA no longer has unfettered loyalty to the client. Finally, and probably most importantly, is coverage precluded by your insurance policy if you enter into a business deal with a client and something goes wrong?

Number 4 – Failing to communicate with clients in writing.

Failing to document important information is a common mistake that often leads to lawsuits.

If it is not in writing, it may be presumed later in a court of law that it didn't happen. Juries expect CPAs to document important events, advice, and client decisions. The client rarely remembers that the CPA told them to stop spending beyond their means, to use the cash they have now to pay estimated tax and avoid penalties in the future, or that they shouldn't give their bookkeeper blank checks. Documentation is needed from beginning to end. It begins with the engagement letter stating what the firm is going to do, what it's not going to do, the limitations of the engagement, and what the client's responsibilities are. Document the advice you give, the information you receive, and the decisions made by the client. And document a disengagement by sending the client a professional, objective and rational letter that lets the client know that the engagement is ending at a specific date.

Number 5 – Mistaking adherence to the professional standards as a substitute for "getting it right."

Juries rarely care about CPA professional standards, rules or disclaimers. What they care about is CPAs getting it right. When you are preparing tax returns, or you are engaged in a review or compilation of financial statements, you are not required to verify certain types of information. But think twice. If something looks irregular, it probably is. Investigate it, document it, communicate it, and get it right.