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Of Mutual Interest

May 2011

Cover Your Notes

Confidentiality depends on role of accountant

By William F. Hargens, J.D.

A business owner calls a meeting to discuss the tax consequences of a particular business transaction. The business owner asks the business's attorney to attend and provide some guidance at the meeting. The business owner also asks that the business's outside accountant attend the meeting. Two years later, the business is involved in litigation related to the transaction, and the plaintiff seeks to discover the outside accountant's notes from the initial meeting.

What now?

Most people are aware, to varying degrees, of the existence of the attorney-client privilege. It is generally understood that a client may invoke the attorney-client privilege to protect confidential communications made to the client's lawyer for the purpose of obtaining legal services.

Those well-versed in the protections afforded by the attorney-client privilege might also know that the privilege applies to confidential communications between representatives of the client and the client's lawyer. However, extension of the attorney-client privilege to confidential communications made by representatives of the client raises an important question – exactly who qualifies as a client's "representative" for purposes of the privilege?

Officers and employees of a corporation are obvious answers. What is less obvious is the extent to which outside accountants qualify as representatives of a client.

Many clients, especially businesses, enjoy long-standing relationships with their respective accounting firms and naturally think of them as acting in a representative capacity. Surprisingly, the case law is far more convoluted.

For example, in a case out of the 7th U.S. Circuit Court of Appeals, the court found that an outside accountant's handwritten notes taken at a meeting at which a lawyer was present were not privileged (*U.S. v. Brown*, 478 F.2d 1038 (7th Cir. 1973)). The purpose of the meeting was to discuss the tax consequences of a potential business transaction. The notes in question consisted of six pages of handwritten notes prepared by the outside accountant concerning the accounting assistance rendered by the accountant at the meeting.

The court noted that "although the attorney-client privilege may in some instances extend to communications to accountants providing assistance to an attorney … what is vital to the privilege is that the communication be made in *confidence* for the purpose of obtaining *legal advice from the lawyer*. If what is sought is not legal advice but only accounting service … or if the advice sought is the accountant's rather than the lawyer's, no privilege exists."

The court concluded that, because the client, rather than the lawyer, asked the accountant to attend the meeting, "notes taken by an accountant at such a meeting should not be considered privileged simply because an attorney is present at the meeting."

The take-away?

CPAs should not assume that an outside accountant's notes taken during a meeting with their client and the client's attorney will be protected by the attorney-client privilege.

CPAs should not automatically assume that an outside accountant's notes taken during a meeting with their client and the client's attorney will be protected by the attorney-client privilege. If outside accountants are asked to attend a meeting at which a lawyer will be present, it would be prudent for them to ask up front what their role at the meeting will be – to provide accounting services to the client or to assist the lawyer in the provision of legal services.

Sometimes the line between those two types of services is difficult to discern, so accountants would be well-served to exercise caution regarding what they record in notes taken during a meeting and should be especially wary of recording communications by an attorney that could eventually prove harmful to the client's interests if discovered in a subsequent dispute between the client and a third party.

When in doubt, consult with legal counsel before you put pen to paper. ■

William F. Hargens, J.D., executive vice president of McGrath North Mullin & Kratz, PC LLO, in Omaha, Neb., has specialized in litigation, including defense of accounting malpractice actions, for 30 years. He is listed in Best Lawyers in America and America's Leading Lawyers for Business Chambers USA and is a Fellow in the Litigation Counsel of America. Contact Hargens at (402) 633-1474 or whargens@mcgrathnorth.com

CPA Mutual and HELPLINE offer harassment training

CPA Mutual and The Workplace Helpline are pleased to announce the launch of a new online "Unlawful Harassment" training.

This course was developed in partnership with the HELPLINE attorneys from the national law firm of Epstein, Becker & Green. An easy-to-use two-hour course, the training is available to all active CPA Mutual HELPLINE site (www.hrhelpline.com/cpa) users at no additional cost.

Users taking the course can start and stop the training at their convenience. More importantly, they will be able to return to the point where they previously stopped to continue the training.

The workplace HELPLINE will provide your company with access to employment attorneys with day-to-day operational experience in numerous industries nationwide. The objective of the HELPLINE program is to provide you and your staff with employment law advice when and where you need it – before an issue becomes a potential claim.

HELPLINE users find answers to avoid liability

CPA Mutual Insurance Company of America Risk Retention Group recognizes the complex employment and HR risk management challenges that business owners, organizations, CEOs and management staff face in their workplace.

The hiring, training and retention of qualified employees are critical to providing quality products and services to clients. However, changing regulations, harassment, discrimination, wrongful termination, fraud, theft and violence can cost companies productivity and profits.

As employers, the owners of small- to medium-sized businesses are at greater risk because of their limited staff and financial capacity to manage these issues. At the same time, they have to keep an eye on growing their businesses.

CPA Mutual Group HELPLINE clients currently using the HELPLINE service recently asked these questions. In some cases, had these organizations acted on their own without first contacting HELPLINE, they could have faced increased exposure to liability.

The HELPLINE attorneys who answered these questions are experts in more than 55 issues related to employment law.

The following topic headers may not include all the issues covered by each question. Any information that might identify the organization has been removed to protect the confidentiality of the communication.

Exempt/Non-Exempt

What are the legal requirements or the appropriate way to keep track of time for administrative staff who get paid time and a half for overtime? Currently time is entered in a time entry program, but it does not "clock" them in/out. Additionally, how would we track this time for telecommuting employees, and are we legally required to do so?

Employee Benefits

Can we require in our paid-time-off program that exempt people take their paid time off in half- or full-day increments? We also want to enforce a "card laid is a card played." That is, if someone takes a day off, that day is used from their paid time off. They can't make it up or reduce the time off by working other hours. Is this allowed?

Hiring Practices

We recently acquired another accounting firm. What forms are the employees required to complete? I imagine they have complete employee packets but nothing in our firm's name. Should they complete all new paperwork as any new employee would?

Compensation

We have a firmwide holiday party on December 10. We make it a mandatory event for full-time employees, and everyone is paid for the day. Do we have to pay an hour of premium pay because the non-exempt employees are not free to do what they want for lunch? We do provide lunch. Do we have to leave the offices open for part-time employees who choose not to attend? It is an all-day event, so we understand some employees who only work four hours a day can't be away for a full day.

Employee Handbooks

I believe there are some Equal Employment Opportunity Commission laws that pertain only for employers with 15 employees or above. For an employer with under 15 employees, do you recommend that these policies/laws still be written in their handbooks? Is there anything that should not be written in a handbook of an employer with less than 15 employees?

Military Leave

Does a New York state employer with 14 employees have to offer its employees military leave? How many employees must an employer have in order to abide by military leave?

Do these questions sound familiar? ■

Divorce cases hold potential liabilities for accountants

W. Wesley Marston,
J.D., LL.M., AIC
Assistant Vice President – Claims
CPA Mutual Insurance Co.

Marriage is about love; divorce is about money. – Anonymous

Unfortunately, divorcing clients may attempt to increase the amount of money they receive by making a claim against their accountant.

When clients divorce, accountants are put in a variety of uncomfortable positions. CPAs are routinely served with subpoenas for depositions and client records.

Potential claims arise from perceived conflicts of interest and lack of objectivity, tax advice that allegedly benefits one party over the other and accusations that valuations intentionally overvalue or undervalue a marital asset.

Divorcing clients are rarely pleased with the terms of their divorce, and the accountant is an attractive target to blame for a less than favorable outcome.

Adele Accountant learned the hard way to be wary of conflicts of interest in divorce situations.

Adele was engaged to perform a valuation of Pete's Paving, a paving company owned jointly by a divorcing couple, Peter and Wendy Disso. The divorce was proceeding amicably.

Peter had offered to buy Wendy's share of the business for $500,000, and counsel wanted to determine whether this was a fair price. Adele determined that the value was $1 million.

Wendy agreed to sell her one-half share for $500,000. Peter refused to agree unless the payments were deductible, so Adele suggested a structure whereby the buyout was deductible to the corporation. The parties reached an agreement and finalized the divorce.

Adele continued to prepare tax returns for Peter, Wendy and the corporation. After Wendy received the final payment under the agreement, she was not satisfied with her standard of living.

When the judge refused to grant her attempts to get more money from Peter, she turned her attention to Adele. Wendy claimed that Adele's valuation was flawed, and that Adele failed to advise her that the distribution could have been structured so that it was tax free to Wendy.

Wendy alleged that Adele deliberately concealed the alternate tax structure and deliberately miscalculated the value of the company. Wendy sued Adele and claimed damages of approximately $1 million.

Adele did not believe that there was a conflict of interest, so she did not disclose the potential conflict and did not seek Wendy's consent. Defense counsel determined that AICPA Code of Professional Conduct, ET §102.03, provided some support for Wendy's allegations.

Humbling Moments

Without a waiver, facts were not favorable. Adele's valuation was identical to the amount proposed by Peter, and her tax advice favored Peter over Wendy.

Adele was taken aback as she truly felt that she was merely trying to work out an acceptable buyout for the couple. She thought that her job was done when Wendy and her counsel voluntarily agreed to Adele's first suggested resolution without asking for alternatives.

Adele's failure to disclose the potential conflict and obtain a waiver created an appearance of impropriety and risk of a large verdict.

Despite defenses that otherwise would have probably led to a defense verdict, settlement was the most prudent course of action.

We are aware of at least three cases with facts similar to those in Adele's case. Defense counsel in one case recommends that any time an accountant has prepared joint returns for a divorcing couple, the accountant should consult counsel and obtain conflict and confidentiality waivers from both parties.

If they refuse, the accountant should withdraw and cooperate only as required by law to prevent being accused of favoring one party over the other. ■

Recent testimonials from CPA Mutual clients

"The CPA Mutual Group HELPLINE allows me to get informative information from the website. I also really enjoy the HR express requests. They are always helpful. Of course, the ability to ask a question to an attorney is also very beneficial to our organization." – *Firm administrator, firm with 26 employees*

"This HR Helpline service has been very helpful on many occasions. Many situations have arisen over the years, and having the HR Helpline as our first source of info has been very helpful. I believe my favorite part of the service is that any question I have asked over the years is available to me, along with the answers I have received. This is great so that I don't have to re-invent the wheel when a similar topic arises years apart. I would absolutely recommend this service to other employers." – *HR coordinator, firm with 50 employees*

"The HELPLINE is very user-friendly and easy to navigate. I tend to use it about five times per year. I would absolutely recommend this service to other employers." – *Human resources manager, firm with 120 employees*

"The HELPLINE is user-friendly and intuitive. I usually use the service about two to three times a year. My favorite part of the HELPLINE is the ability to ask a question to the attorneys. This way I can get a direct response from them." – *Firm administrator, firm with 34 employees*

21st century accountants face growing risk

Risky business

William W. Thompson, CPA, RPLU, President, CPA Mutual

"Becoming involved in a lawsuit is like being ground to bits in a slow mill; it's being roasted in a slow fire; it's being stung to death by single bees; it's being drowned by drops; it's going mad by grains." – Charles Dickens (1853).

A quick question … does your practice face more or less risk today than it did five years ago?

I think most of you will agree with me without hesitation when I say, "MORE risk." There are several reasons I say this, but some stand out more than others.

First of all, since 2000 – on the heels of the financial reporting fiascos that we all remember associated with Waste Management, Andersen/Enron, WorldCom, et al. – it appears that judges have been less likely to throw out cases against CPAs than they once were. Judges grant fewer motions for summary judgment and seem to require additional discovery before rendering decisions on cases.

It seems that, in almost every case, we are required to perform an extensive amount of discovery before we can possibly reach a settlement. Of course, this entails subpoenas, depositions, hiring expert witnesses and countless hours of time spent by our member firms that happen to get sued.

CPA Mutual's claims experience bears this out. Just look at these statistics on cases opened during the late '90s and early 2000s.

- Prior to 1998, we incurred expenses on an average of 32.45 percent of our reported claims.
- Since 1999, claims with expenses paid averaged 48.54 percent.

This is a 41 percent increase – something happened!

Another indication of rising claims against CPAs is the number of matters filed per staff person employed.

- In 1993, the number of matters per staff was 87.
- Our latest year, 2010, was 67 matters per staff.

Even worse, the same statistic, based upon professional staff only, was 46 matters per professional in 1993. In 2010, it was 38! Based upon our records, a firm can expect at least one matter per year reported for every 38 professionals employed.

I also believe the financial scandals placed targets squarely on the backs of CPAs. Plaintiff's bar figured out early that accountants are usually the "last men standing," and CPAs carry insurance. We all know what this equals … deep pockets!

So, we're now litigating more cases, and fees and costs have also increased.

Second, the labor shortage in the profession (and in some part, the current economy) has added an increased burden on staff and management. I actually heard a plaintiff attorney say, "There are too many 'kids' doing audits and not enough senior-level staff people to adequately supervise them." And I might add, he said this with glee in his voice!

Firms need to slow down and remember they have only so many qualified individuals to handle the workload. So, before adding that new client, think long and hard, and make sure you have the right people working the engagement.

And when I say "right," I mean qualified. There is nothing worse than to hear from one of your staff at deposition, "I had no idea what I was supposed to do, and there was no one on the job to answer my questions."

Last but not least, how about electronic files? These include not only your workpapers but also e-mails, text messages, instant messages, blogs and any other message stored electronically. Remember, it's all discoverable (even personal home computers and phones used for business).

And people write differently than they speak. Andersen wasn't found guilty of performing a bad audit – it was found guilty of a cover-up based upon one bad e-mail!

Also, if you are an old stogy like me, you don't realize how prevalent this mode of communication is among the younger generation. Can you imagine plaintiff attorneys getting their hands on a text message from a junior staff person telling a friend that the senior on the job has no clue what he or she is doing?

Not only might a document like this prove to be a "smoking gun," but electronic document discovery and trial preparation is expensive. And there is a very complex set of rules for their retention and safekeeping once a claim is imminent or threatened. This alone will require the help of an attorney.

Now more than ever you need to be extremely careful with your client retention and acceptance procedures. Make sure you have qualified staff at every level working on those engagements, and make sure your firm has a document retention policy in place that includes electronic documents.

It's probably also a good time to remind your staff that anything they write – regardless of its form – may be discoverable. It certainly makes a lot more sense for you to remind them now before they try to explain it to a judge and jury!

As claims statistics worsen, insurance companies that recently entered the accountants market only to grab market share will be heading for the exits. It happened in the mid-'80s and then again in the early 2000s, so CPAs should not be surprised if they receive a non-renewal letter in the mail informing them that the company to whom they have paid premiums all these years won't be around to service their claims. And I might add, the last thing CPAs want to deal with is claim litigation being serviced by an insurance company that no longer serves their market!

This is exactly why CPA Mutual was formed and has serviced the CPA marketplace since 1987. CPA Mutual, a company whose objective is to provide coverage to CPAs, is not going to withdraw from the market when the going gets tough.

Please feel free to give me a call at (800) 543-3029 or e-mail me at bthompson@cpamutual.com if you have any questions or if I can help in any way. And if you're currently not a CPA Mutual member, now is a great time to check us out. Visit our website at www.cpamutual.com. ■

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CPA Mutual Insurance Company of America Risk Retention Group
Burlington, Vermont

PROFESSIONAL LIABILITY

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Our program is available to firms that have completed a peer or quality review, if required.

A binding quotation is subject to receipt and approval of a completed CPA Mutual Professional Liability Insurance Application. This is a "Quick Quote" form to permit us to give you a premium indication. Please complete and return this form to CPA Mutual's Servicing Office, CPA Mutual Management, Inc., 11801 Research Dr., Alachua, Florida 32615. **Telephone: (800) 543-3029 or (386) 418-4003, Fax: (386) 418-4004**. www.cpamutual.com *(Please type or print.)*

1. Name of prospective applicant: _____

2. Principal business address: _____

_____ Telephone ( ) Fax ( )
City State ZIP

E-mail _____ Web site: _____

3. Staff Size:
   a) Number of ***full-time*** proprietor(s), partner(s) and owner(s): _____
   b) Number of CPAs (***excluding*** those listed above): _____
   c) Number of all other staff ***including*** administrative support and clerical staff: _____
   d) Number of part-time equivalent employees (Estimated total hours worked by all part-time, per diem employees during the past 12 months divided by 2,080): _____

   TOTAL STAFF: _____

4. Estimated annual billings: _____

5. Has the prospective applicant carried continuous professional liability insurance during the past 5 years? ☐ Yes ☐ No
   a) Please provide the following regarding your ***current year*** professional liability insurance coverage:

Insurance Company	Limits of Liability	Deductible	Annual Premium

   b) Date current policy expires (Month/Day/Year): _____ c) Retroactive or prior acts date: _____
   d) Does your firm perform audit and/or review services?: ☐ Yes ☐ No
   e) Do you desire coverage for audit and/or review services?: ☐ Yes ☐ No

6. Check limit of liability desired. (Limit applies to each claim and in the annual aggregate and is subject to applicable deductible.)
   ☐ $250,000 *($250,000 limits available only if staff is less than 15.)* ☐ $500,000
   ☐ $1,000,000 ☐ $2,000,000 ☐ $3,000,000 ☐ $4,000,000 ☐ $5,000,000
   Upon receipt of a completed, full application, quotations may be obtained for limits in excess of $5 million.

7. Check deductible desired. (Per claim applies to both loss and expense.)

Staff Size 1-15:	☐ $ 1,000	☐ $ 2,500	*($1,000 or $2,500 deductible available only with $250,000 or $500,000 limit of liability.)*
Staff Size 1-24:	☐ $ 5,000	☐ $10,000	
Staff Size 25-49:	☐ $10,000	☐ $25,000	
Staff Size 50+:	☐ $25,000	☐ $50,000	

Other deductibles may be available upon request.

_____ _____
Name of person submitting this request Date

To receive a binding quotation, please request an application for completion.
For additional information, please complete questions 1 and 2 above, and return this form to CPA Mutual.

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CPA Mutual Insurance Company of America Risk Retention Group
Burlington, Vermont

EMPLOYMENT PRACTICES LIABILITY

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A binding quotation is subject to receipt and approval of a completed CPA Mutual Employment Practices Liability Application. This is a "Quick Quote" form to permit us to give you a premium indication. Please complete and return this form to CPA Mutual's Servicing Office, CPA Mutual Management, Inc., 11801 Research Dr., Alachua, Florida 32615. **Telephone: (800) 543-3029 or (386) 418-4003, Fax: (386) 418-4004**. www.cpamutual.com *(Please type or print.)*

1. Name of prospective applicant: _____

2. Principal business address: _____

   _____ Telephone ( ) Fax ( )

   City State ZIP

   E-mail _____ Web site: _____

3. Staff Size:
   a) Number of ***full-time*** employees: _____
   b) Number of ***part-time*** employees: _____
   c) Number of ***seasonal*** employees: _____
   d) Number of ***temporary*** employees: _____

4. Estimated annual billings: _____

5. Has the prospective applicant carried employment practices liability insurance during the past 5 years?

   ☐ Yes ☐ No

   a) If so, please provide the following regarding your current year employment practices liability coverage:

Insurance Company	Limits of Liability	Deductible	Annual Premium

   b) Date current policy expires (Month/Day/Year): _____

   c) Retroactive or prior acts date: _____

6. Check limit of liability desired. (Limit applies to each claim and in the annual aggregate and is subject to applicable deductible.)

   ☐ $250,000/$750,000 ☐ $500,000/$500,000 ☐ $1,000,000/$1,000,000 ☐ $1,000,000/$2,000,000 ☐ $1,000,000/$3,000,000

7. Deductible Requested: $2,500 _____ $5,000 _____ $10,000 _____ Other _____

8. Does applicant publish an employees' manual? _____ Is it distributed to all employees? _____

9. Has the applicant implemented or adopted anti-sexual harassment policies/procedures?

   Yes _____ No _____

10. Has the applicant adopted anti-discrimination policies/written procedures regarding the selection of employees for hiring, promotion, transfer, layoff, salary increases, work assignments and other employment related areas?

    Yes _____ No _____

_____ _____
Name of person submitting this request Date

To receive a binding quotation, please request an application for completion.

CPA objectivity important when valuing a business

By Anthony Talerico, Jr., MBA, CPA

As cliché as it may sound, one of the pillars of the accounting profession is integrity.

The role of the accountant is so crucial for the successful operations of a business that CPAs have always been looked to with respect for their ability to advise business owners on a myriad of topics. It has long been established that the CPA must meet certain standards of independence, objectivity and integrity when performing attest services.

Similarly, certain standards are called into play when a CPA performs a business valuation.

When working with a client on a business valuation, the CPA assumes one of the following roles: an adviser who is compensated to determine a value that – within the constraints of sound valuation theory – is most advantageous to the client or, alternatively, one who is compensated to perform an objective valuation of a company.

The CPA should be very clear to communicate which of these very different roles he or she is being paid to take on and document it in an engagement letter. This possibility of being an advocate versus being neutral requires knowledge and a commitment to remaining independent.

The foundation in accounting literature for the concept that a CPA performing a business valuation is objective can be found in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct, Rule 102 – *Integrity and Objectivity*:

"In the performance of any professional service, a member shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others."

This hallmark for CPA conduct is amplified by even newer literature, namely the AICPA Statement on Standards for Valuation Services No. 1, which states:

"... The principle of objectivity imposes the obligation to be impartial, intellectually honest, disinterested, and free from conflicts of interest. If necessary, where a potential conflict of interest may exist, a valuation analyst should make the disclosures and obtain consent as required under Interpretation No. 102-2."

Consider the impact the work of a CPA has in preparing a business valuation when it comes to a divorce engagement. The value determined by the valuation analyst will be used to establish equitable distribution between the spouses. Not only will the value of the business be factored into asset allocation and division, but some of the procedures performed for the valuation may also serve in determining the true income of the business-owning spouse. This has very significant consequences because it is a basis on which alimony is determined.

Clearly, it is the objectivity and integrity of the CPA that attorneys seek when hiring a valuation analyst. Even more, these qualities must be beyond reproach when considering the fact that often the CPA is an expert who may be called upon to testify at trial or even to assist in mediating the case between all parties.

The same standards of independence and objectivity apply in the purchase or sale of a business, valuation for estate planning and gifting, the buy-in or buy-out of a business owner and many other scenarios. Certainly there are parts of any business valuation that require the valuation analyst's judgment, and one CPA may differ with another in one of these areas. However, this does not negate the need for an independent analysis.

While the CPA adviser may discuss negotiation strategies with clients, this does not eliminate the need for independence.

Independence is discussed in terms of "fact" and "appearance." While the "facts" of independence violations are delineated in accounting literature, the "appearance" violations are occasionally subject to debate.

For example, what if a CPA performs write-up work for a company and prepares the owner and spouse's income tax return. When the couple divorces, should the CPA perform the valuation?

On the one hand, the valuation analyst could make his role clear to the attorneys and disclose it in an engagement letter and subsequent report. But is that sufficient?

On the other hand, how does the CPA defend himself from potential charges that he intended to keep the business owner as a client in the future (with the write-up work, of course) and that this fact did not influence the work product?

Another factor to consider is that of self-review. A CPA in the above situation would effectively be reviewing his own write-up work as he prepares the business valuation. While he may claim to be independent with respect to each party, it is very difficult to be perceived as "intellectually honest" when reviewing one's own work.

Further, if the valuation analyst later testifies to a valuation report that found issues with the write-up work, the credibility of the entire firm may become an issue.

While CPAs often try to be a one-stop shop for all their clients' needs, considering the absolute need for independence and objectivity when performing a business valuation, they may need to consider passing the valuation work to others outside the firm in certain situations.

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CPA disbarred for failing to exercise due diligence

Exercising due diligence is a big deal to the IRS.

CPA Tim W. Kaskey discovered that the hard way. He was disbarred for failing to exercise due diligence in preparing tax returns for a corporation and its husband and wife shareholders. The Office of Professional Responsibility (OPR) won an appeal involving issues that include the due diligence responsibilities of a CPA under the Rules of Practice before the IRS (Circular 230).

Kaskey, a CPA and tax adviser, also prepared individual and corporate tax returns. According to the OPR, Kaskey failed to exercise due diligence under Circular 230, Section 10.22, when he didn't determine the correctness of the representations he made to the IRS on the tax returns of a corporation and its married shareholders. The office also alleged that Kaskey failed to comply with the requirement to advise clients of potential penalties and any opportunities to avoid such penalties by disclosure contained in Circular 230, Section 10.34(c), formerly Section 10.34(b).

Kaskey did not respond and did not appear at the administrative proceeding. The administrative law judge viewed his behavior as an admission of the allegations and entered a default judgment for disbarment. When Kaskey appealed, the Treasury Appellate Authority reviewed the case and agreed that disbarment was proper.

Kaskey defended against the due diligence allegations by arguing that his clients had misrepresented their income to him.

However, "it was inconceivable that [the individual taxpayers] could pay their living expenses based on the income reported on their returns," the appellate authority said.

In the authority's view, the evidence showed that Kaskey did not use due diligence when preparing these returns.

"Practitioners who think OPR isn't serious about due diligence should take heed," said OPR Director Karen L. Hawkins.

According to Hawkins, diligent CPAs will pay attention to "the implications of information already known" and "make reasonable inquiries if the information furnished by a client appears to be incorrect, inconsistent, or incomplete." ■