

Client Records: Your Responsibilities with Hand-Over Requests

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Insightful lessons can be learned by reviewing professional liability issues. With this in mind, Gallagher Affinity provides this column for your review. For more information about liability issues, contact Irene Walton at Irene_walton@ajg.com.

When a client decides to part ways with you and requests the return of his or her records, do you know your obligations to comply with this request? Don't worry if you don't. There is guidance readily available.

Guidance

There are several sources of professional guidance in this area, including Treasury Circular 230, the AICPA Code of Professional Conduct, and state regulations.

Circular 230 — For tax practitioners, Circular 230, *Regulations Governing Practice before the Internal Revenue Service*, Section 10.28(a), generally requires a practitioner to promptly return all “records of the client” necessary for the client to comply with federal tax obligations. “Records of the client” are defined to include:

- Documents/materials provided to the practitioner or obtained by the practitioner while representing the client which preexisted the engagement.

- Materials prepared by the client or a third party at any time and provided to the practitioner.
- Any return, claim for refund, schedule, affidavit, appraisal, or other document prepared by the practitioner previously provided to the client if necessary for the no-payer to comply with current federal tax obligations.

However, “records of the client” do not include any return, claim for refund, schedule, affidavit, appraisal, or any other document prepared by the practitioner or the firm pending the client’s fulfillment of a contractual obligation of fee payments.

AICPA Code of Professional Conduct —

Whether you are a tax practitioner or an auditor, look to AICPA’s Code of Professional Conduct. The AICPA Code applies to its members, but it is also pertinent to non-members who reside in states where the accountancy boards are either silent on the issue or have incorporated the AICPA Code into state regulations. According to the “Acts Discreditable” section, failing to provide client records in response to a client request is a violation. The records are defined as follows:

- Client-provided records are accounting or other records, including reproductions of such records, belonging to

the client that were provided by, or on behalf of, the client.

- Member-prepared records are those that the member was not specifically engaged to prepare and are not in the client's books and record or are otherwise not available to the client. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement.

The AICPA Code requires "client-provided" and "member-prepared" records to be returned. This is broader than Circular 230, so be aware. The AICPA does not require member work papers for the engagement to be provided, as they are not deemed client records. If the client has not paid engagement fees, the AICPA and PICPA say members may also withhold client-provided or member-prepared records specific to the engagement for which fees remain outstanding until paid.

State-specific regulations — Regardless of the nature of your practice, consult your state accountancy board to see if additional regulations exist. While many have issued authority in line with the AICPA, or defer to AICPA guidance, be aware of your board's guidance. In Pennsylvania, an accountant's work papers are the property of the accountant, absent an agreement to the contrary; and need not be included with a request for records. Client-provided records, documents prepared by the accountant that are needed to render complete financial records, and an

accountant's deliverable work product must be produced in a request for records.

Producing Records Timeline

Again, check your state-specific rules. For example, Pennsylvania requires that you comply with a records request within a "reasonable period of time" (while "reasonableness" may vary, the PICPA Code of Ethics states that requests should be responded to within 45 days), but the Texas State Board of Public Accountancy requires a CPA to promptly (not to exceed 10 business days) produce records to a client. If you are an AICPA member, or there is no set deadline in your state, then guidance can be found in AICPA's requirement that a "member should comply with the client's request in an expedient manner but generally within 45 days."

Fee Disputes and Compliance Charges

According to AICPA's Code, members may charge a "reasonable fee" for the expense incurred to retrieve and copy requested records, and can require this to be paid prior to the records being provided.

Keep in mind that Circular 230 mandates that all records needed to comply with federal tax obligations must be promptly returned. ■

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