

Practice Made Perfect

Ethical Rules
for
Tax Professionals

Rules, Rules, Rules

- Circular No. 230, Rules Governing Practice Before the Internal Revenue Service
- Vermont Rules of Professional Conduct
- AICPA Statement on Standards for Tax Services

Story #1: Dick and Jane

- Dick is Executive Director of Relax, Inc.
- Property has a great view.
- Dick thinks the view isn't needed.
- Jane is a developer, wants to buy the view.
- Dick wants to help Jane.
- Dick and Jane are married.

Story #1 : Dick and Jane, continued

- Jane asks you to represent her in the purchase of the view.
- Relax, Inc., is enjoying troubled employment tax times.
- Dick asks you to help with the tax troubles.
- Can you help Relax, Inc.?

Story #1 : Dick and Jane, continued

- Dick and Jane need estate planning.
- Can you represent both?

- Jane asks for help with basis.
- Jane has underreported income.
- Dick and Jane file jointly.

Story #1 : Dick and Jane, continued

- IRS refuses to abate the penalties.
- Can you represent Relax, Inc. in an appeal?
- Jane dies and Dick is her Executor.
- An estate tax return will be prepared.
- What about the underreported income?

Story #2: Fred and Dully

- Fred prepares tax returns.
- Dully is his receptionist and more.
- Dully accepts shoebox from Rocky the Bookkeeper.
- Shoebox contains “Winner” lottery tickets and losing tickets that are punched with ABOM’s logo, Schrödinger’s Smiley:

Story #2 : Fred and Dully, continued



Story #2 : Fred and Dully, continued

- ABOM owner is a gambler.
- Fred tells Dully to prepare the return.
- Fred signs, taxpayer signs, return goes to IRS.
- Fred finds Schrödinger Smiley punch with lottery tickets in Dully's desk.
- Fred finds Dully's unfiled returns in Dully's desk.

Story #2: Fred and Dully, continued

- What if Fred is an attorney and corrects Dully's math on return she prepares?
- What if Fred helps with Form 8824 and discovers that another client participated in the exchange?

Story #3: Ed and Sophie

- Ed and Sophie are brother and sister sharing office space and a computer network.
- Ed is an attorney; Sophie is a CPA.
- They share files for mutual clients.
- They segregate and protect files for non-mutual clients.
- Weird music plays; computer screens show:

Story #3: Ed and Sophie, continued

- *Greetings.*
- *The Professional Services Protective Bureau has detected that there was an attempted infiltration by the computers in the office of yours. To protect you're files from disclosure that is not advertent, the PSPB has encrypted all of the materials on your hard drives and network drives. When you are certain absolutely that no mischief has been done to you're system, you may purchase a key to unlock your protected files for 10 bitcoins transmitted to the PSPB account at <<link to account>>*

Story #3: Ed and Sophie, continued

- *If difficulties befall you by creating a bitcoin account or the proper transmission of the necessary fundings, you may arrange purchase of the necessary currency with our technical services bureau. You may reach them by emailing 108475020348@PSPB.info or by phone at 18765555555.*
- *Your prompt attention is necessary as the key will degrade and expire promptly in 72 hours.*

Story #3: Ed and Sophie, continued

- Ed and Sophie discover that all their files are well and truly protected by having been completely encrypted. The online back up and the tape backup system are also perfect copies of the encrypted files.

VERMONT RULES OF PROFESSIONAL CONDUCT

- **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.

VERMONT RULES OF PROFESSIONAL CONDUCT

- **Rule 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**
- d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

VERMONT RULES OF PROFESSIONAL CONDUCT

- **Rule 1.4. COMMUNICATION**

- (a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule [1.0 \(e\)](#), is required by these rules;

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

VERMONT RULES OF PROFESSIONAL CONDUCT

- **Rule 1.4. COMMUNICATION**
- (a) A lawyer shall:
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

VERMONT RULES OF PROFESSIONAL CONDUCT

- **Rule 1.4. COMMUNICATION**

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Circular No. 230

- § 10.22 Due Diligence
 - Filings with the IRS
 - Representations to Treasury (oral or written)
 - Representations to clients

Circular No. 230

- § 10.35 Competence
 - Knowledge
 - Skill
 - Thoroughness
 - Preparation

Circular No. 230

- § 10.37 Requirements for written advice.
 - Based on “reasonable” factual and legal assumptions.
 - Relevant facts and circumstances that the practitioner knows or reasonably should know have been considered
 - Reasonable efforts to identify and ascertain the facts

Circular No. 230

- § 10.37 Requirements for written advice.
 - No reliance on others if unreasonable
 - Law is related to facts
 - Audit risk is not part of evaluation

Circular No. 230

- § 10.51 Incompetence and Disreputable Conduct
 - False opinion or intentionally or recklessly misleading given knowingly, recklessly, or through gross incompetence
 - Engaging in a pattern of providing incompetent opinions