

Proposed Rulemaking

Title

Promulgated by:
Arkansas State Board of Public Accountancy

Title 17. Professions, Occupations, and Businesses

Chapter XLII. Arkansas State Board of Public Accountancy, Department of Labor and Licensing

Subchapter A. Generally

Part 235. Code of Professional Conduct

Subpart 1. Code of Professional Conduct, Generally

17 CAR § 235-101. Purpose and intent.

(a) The Rules of Conduct set out in this part rest upon the premises that the reliance of the public in general, and of the business community in particular, on sound financial reporting and on the implication of professional competence, which inheres in the authorized use of legally restricted title relating to the practice of public accountancy, imposes on persons engaged in such practice certain obligations both to their clients and to the public.

(b) These obligations, which the Rules of Conduct are intended to enforce where necessary, include the obligation to:

- (1) Maintain independence of thought and action;
- (2) Strive continuously to improve one's professional skills;
- (3) Observe, where applicable, generally accepted accounting principles and generally accepted auditing standards;
- (4) Promote confidence;
- (5) Uphold the standards of the public accountancy professional; and

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(6) Maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

(c) Acceptance of licensure to engage in the practice of public accountancy, or to use titles which imply a particular competence so to engage, involves acceptance by the licensee of such obligations, and accordingly of a duty to abide by the Rules of Conduct.

17 CAR § 235-102. Applicability.

(a) The Rules of Conduct are intended to have application to all kinds of professional services performed in the practice of public accountancy, including tax and management advisory services, and to apply as well to all licensees, whether or not engaged in the practice of public accountancy except where the wording of this part clearly indicates that the applicability is more limited.

(b)(1) A licensee who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the Arkansas State Board of Public Accountancy for departing, with respect to such foreign practice, from any of the rules, so long as his or her conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which he or she is practicing.

(2) However, even in such a case, if a licensee's name is associated with financial statements in such manner as to imply that he or she is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices are followed, he or she will be expected to comply with 17 CAR §§ 235-301 – 235-303.

(c) In the interpretation and enforcement of this part, the Arkansas State Board of Public Accountancy will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and by appropriately authorized committees on ethics of professional organizations.

17 CAR § 235-103. Definitions.

As used in this part:

(1) "Associated with" means:

(A) Any written or nonwritten contractual relationship between the licensee and a nonlicensed office or business whereby compensation is paid to or received from the nonlicensed office or business by the licensee firm in connection with the performance of professional services; or

(B) A situation where the licensee or a relative (spouse, child, parent, or sibling) of the licensee owns an interest in the nonlicensed office or business;

(2) "CPA" means certified public accountant;

(3) "CPA License" and "License" mean:

(A) A certificate issued under Arkansas Code § 17-12-301 or -308; and

(B) A registration issued under Arkansas Code § 17-12-401 et seq.

(4) "Licensee" means the holder of a CPA license.

Subpart 2. Rules of Conduct — Independence, Integrity, and Objectivity

~~17 CAR § 235-201. Definitions.~~

~~For the purposes of 17 CAR §§ 235-202 and 235-506 — 235-508:~~

~~(1) "Associated with" means:~~

~~(A) Any written or nonwritten contractual relationship between the licensee or registered firm and a nonlicensed office or business whereby compensation is paid to or received from the nonlicensed office or business by the licensee or registered firm in connection with the performance of professional services;~~

~~(B) A situation where a relative (spouse, child, parent, or sibling) of the licensee owns an interest in the nonlicensed office or business; or~~

~~(C) A situation where any licensed owner or employee of the firm, registered firm, or licensee owns an interest in the nonlicensed office or business; and~~

~~(2) "Registered firm" means any partnership, corporation, professional corporation, and limited liability company of certified public accountants or public~~

~~accountants registered with the Arkansas State Board of Public Accountancy pursuant to Arkansas Code § 17-12-401 et seq.~~

17 CAR § 235-20~~12~~. Independence.

(a) A licensee in public practice shall be independent in the performance of professional services as required by professional standards as defined in 17 CAR § 236-70~~12~~.

(b) When a licensee ~~or registered firm~~ is associated with a nonlicensed office or business, the licensee ~~or registered firm~~ shall disclose the licensee's ~~or registered firm's~~ lack of independence when performing attest services or compilation services for a client who has paid or is expected to pay a commission or contingent fee to such nonlicensed office or business.

17 CAR § 235-20~~23~~. Integrity and objectivity.

(a) In the performance of professional services, a licensee:

(1) Shall maintain objectivity and integrity;

(2) Shall be free of conflicts of interest; and

(3) Shall not knowingly misrepresent facts nor subordinate ~~his or her~~ judgment to others.

(b) In tax practice, however, a licensee may resolve doubt in favor of ~~the his or her~~ client as long as there is reasonable support for ~~their his or her~~ position.

17 CAR § 235-20~~34~~. Incompatible occupations.

A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs ~~the licensee's his or her~~ independence or objectivity in rendering professional services.

Subpart 3. Rules of Conduct — Competence and Technical Standards

17 CAR § 235-301. General standards.

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A licensee shall comply with the following standards:

(1) The licensee ~~or licensee's firm~~ shall undertake only those professional services that can reasonably be expected to be completed with professional competence;

(2) The licensee shall exercise due professional care in the performance of professional services;

(3) The licensee shall adequately plan and supervise the performance of professional services; and

(4) The licensee shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

17 CAR § 235-302. Compliance with standards.

A licensee who performs auditing, review, compilation, management consulting, tax, or other professional services shall comply with professional standards as defined in 17 CAR § 236-70~~1~~².

17 CAR § 235-303. Accounting principles.

(a)(1) A licensee shall not express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such financial statements or data contain any departure from an accounting principle promulgated by bodies identified in Professional Standards, 17 CAR § 236-701 et seq., to establish such principles that have a material effect on the financial statements or data taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances the financial statements or data would otherwise have been misleading.

(2) In such a case, the licensee's report must:

(A) Describe the departure;

(B) The approximate effects thereof, if practicable; and

(C) The reasons why compliance with the principle would result in a misleading statement.

(b) For purposes of this section, generally accepted accounting principles are considered to be defined by:

(1) Pronouncements issued by the Financial Accounting Standards Board and its predecessor entities; and

(2) Similar pronouncements issued by other entities having similar generally recognized authority.

17 CAR § 235-304. Prospective financial statements or data.

A licensee shall not, in the performance of professional services, permit his or her name to be used in conjunction with any prospective financial statements or data in a manner which may reasonably lead to the belief that the licensee vouches for the achievability of the prospective financial statements or data.

Subpart 4. Rules of Conduct — Responsibilities to Clients

17 CAR § 235-401. Confidential client information.

~~(a)~~ A licensee shall not disclose, without the consent of his or her client, any confidential information pertaining to his or her client obtained in the course of performing professional services.

(b) A licensee shall not transfer client records to a purchaser until a notification of at least thirty (30) days has been provided to his or her client, allowing each client the opportunity to opt out of the transfer and to take possession of their records.

~~(b)~~ This section does not:

(1) Relieve a licensee of any obligations under 17 CAR §§ 235-302 and 235-303;

(2) Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of court;

(3) Prohibit a licensee's compliance with applicable laws and government regulations;

(4) Prohibit review of a licensee's professional practice under Arkansas State Board of Public Accountancy authorization; or

(5) Preclude a licensee from initiating a complaint with, or responding to any inquiry made by, the board or any investigative or disciplinary body established by law or formally recognized by the board.

(ed) Members of the board and professional practice reviewers shall not use to their own advantage or disclose any confidential client information which comes to their attention in carrying out those activities.

(de) This prohibition shall not restrict a licensee's exchange of information in connection with the investigative or disciplinary proceedings described in subdivision (b)(5) of this section or the professional practice reviews described in subdivision (b)(4) of this section.

17 CAR § 235-402. Records.

(a)(1) Licensees should make every attempt to resolve record request disputes in a professional and timely manner.

(2) In cases where agreement cannot be reached, this section will apply.

(3) For purposes of the definitions below, the term "client" includes both current and former clients.

(b)(1) Client-provided records are accounting or other records belonging to the client that were provided to the licensee, by or on behalf of, the client ~~or former client~~, including hardcopy or electronic reproductions of such records.

(2)(A) A licensee shall return client-provided records to a client within a reasonable time after the client ~~or former client~~ has made a request for those records.

(B) A reasonable time shall not exceed ten (10) business days, though the

Arkansas State Board of Public Accountancy may determine that the records must be returned sooner in cases in which time is of the essence.

(3) The licensee shall provide these records to the client, regardless of the status of the client's account and cannot charge a fee to provide such records.

(4) Such records shall be returned to the client in the same format, to the extent possible, that they were provided to the licensee by the client.

(5) The licensee may make copies of such records and retain those copies.

(c)(1) Licensee-prepared records are accounting or other records that the licensee was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, with the result that the client's ~~or former client's~~ financial information is incomplete.

(2) Examples include:

(A) Adjusting, closing, combining, or consolidating journal entries, including computations supporting such entries; and

(B) Supporting schedules and documents that are proposed or prepared by the licensee as part of an engagement.

(3)(A) These records shall ~~also~~ be furnished to the client within a reasonable time after the client has made a request for the records, not to exceed twenty (20) business days.

(B) The board may determine that the records must be returned sooner in cases in which time is of the essence.

(4) The licensee may charge a reasonable fee for providing such records, and the records provided should be in a format that the client can reasonably expect to use for the purpose of accessing such work papers.

(5)(A) Licensees may require outstanding fees related to the engagement involving the specific records being requested to be paid before providing copies of licensee-prepared records to the client.

(B) Licensee-prepared records must be provided to the client for all periods in which fees have been paid.

(d)(1) Licensee work products are deliverables set forth in the terms of the engagement, such as tax returns or audit reports.

(2) Work products should be provided to the client as soon as possible, except that such work products may be withheld if:

(A) There are fees due to the licensee for the specific work product;

(B) The work product is incomplete;

(C) Professional standards require withholding the work products, i.e., holding an audit report due to outstanding audit issues; or

(D) Threatened or outstanding litigation exists concerning the engagement or licensee's work.

(3) Licensees may charge a reasonable fee for providing copies of work products after the originals have been provided to the client.

(e)(1) Licensee working papers are items prepared solely for purposes of the engagement and include items prepared by the licensee, such as audit programs, analytical review schedules, and statistical sampling results and analyses, which reflect testing or other work performed by the licensee.

(2) Working papers remain the property of the licensee who developed the working papers, and licensees are under no obligation to provide copies to clients or other parties unless required by law or requested by the board.

(f)(1) It is recommended that a licensee obtain a receipt or other written documentation of the delivery of records to a client.

(2)(A) Licensees are not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format.

(B) However, if the client requests records in a specific format and the records are available in such a format within the licensee's custody and control, the client's request should be honored.

(C) In addition, the licensee is not required to provide the client with formulas, unless the formulas support the client's underlying accounting or other

records, or the licensee was engaged to provide such formulas as part of a completed work product.

(g) Documentation or work documents required by professional standards for attest services shall be maintained in paper or electronic format by a licensee for a period of not less than five (5) years from the date of any report issued in connection with the attest service.

(h)(1) Licensees must comply with the rules and regulations of authoritative federal regulatory bodies, such as the Internal Revenue Service, the United States Securities and Exchange Commission, or the Public Company Accounting Oversight Board when the licensee performs services for a client and is subject to the rules and regulations of such regulatory body.

(2) Failure to comply with the more restrictive provisions contained in the regulations of the applicable regulatory body will constitute a violation of this part.

Subpart 5. Rules of Conduct — Other Responsibilities and Practices

17 CAR § 235-501. Discreditable acts.

A licensee shall not commit any act discreditable to the profession.

17 CAR § 235-502. Acting through others.

A licensee shall not permit others to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the licensee, would place him or her in violation of this part.

17 CAR § 235-503. Advertising and other forms of solicitation.

(a) A licensee shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is:

- (1) False;
- (2) Misleading; or
- (3) Deceptive.

(b) Solicitation by the use of coercion, overreaching, or harassing conduct is prohibited.

17 CAR § 235-504. Firm names.

(a) A licensee may practice public accounting only in a form of organization permitted by the Public Accountancy Act of 1975, Arkansas Code § 17-12-101 et seq.

(b)(1) A licensee shall not practice public accountancy under a name which is misleading in any way, as to:

(A) The legal form of the firm;

(B) The persons who are partners, managers, members, officers, or shareholders of the firm; or

(C) Any matter with respect to which public communications are restricted by 17 CAR § 235-503.

(2) ~~However, n~~Names of one (1) or more past partners, members, or shareholders may be included in the firm name of a partnership, limited liability company, corporation, or its successor. ~~, and a~~

(3) A partner or member surviving the death or withdrawal of all other partners or members may continue to practice under a partnership or limited liability company name for up to two (2) years after becoming a sole practitioner.

(c) A fictitious firm name (that is, one not consisting of the names or initials of one (1) or more present or former partners, members, or shareholders) may not be used by a CPA firm unless such name has been registered with and approved by the Arkansas State Board of Public Accountancy as not being false or misleading.

(d) A firm may not include the term "Associates" or "Company" unless the firm has at least two (2) full time CPAs on staff.

17 CAR § 235-505. Practice in a nonlicensed office or businessunregistered entity.

A licensee shall not practice public accountancy or use their CPA title or designation in association with a sole proprietor, partnership, corporation, or other entity which is

not ~~registered-licensed~~ with the Arkansas State Board of Public Accountancy, unless the appropriate disclaimer is used as provided in 17 CAR § 236-1403.

17 CAR § 235-506. Notification by licensees who are associated with a nonlicensed office or business.

(a)(1) A licensee ~~or registered firm~~ that is associated with a nonlicensed office or business which performs professional services as defined in Arkansas Code § 17-12-103(~~175~~) of the Public Accountancy Act of 1975, Arkansas Code § 17-12-101 et seq., shall notify the Arkansas State Board of Public Accountancy of such ~~associationsoffices or businesses~~ within thirty (30) days after the creation of the relationship.

~~_____ (A) The notification must be in writing and clearly labeled "Notice of Association with an Unregistered Entity."~~

~~_____ (B) A separate notice must be provided for each such association with a nonlicensed office or business.~~

(2) Notice must be similarly given by the licensee ~~or firm~~ when the relationship terminates.

~~_____ (3) No form is provided for such notices, but they must be in writing and whether in letter form or otherwise, they must clearly be labeled with "Notice of Association With, or Ownership of, Nonlicensed Office or Business."~~

~~_____ (4) A separate notice must be provided for each such nonlicensed office or business.~~

(b) Information to be contained in the notices shall include:

(1) Name of the nonlicensed office or business;

(2) Name and percentage of ownership for each owner of the nonlicensed office or business ~~or owners and percentage of ownership of each (if more than one (1))~~;

(3) Name of the manager of the nonlicensed office or business;

(4) Address and phone number of the nonlicensed office or business;

~~_____ (5) Phone number of office or business;~~

(~~5~~6) Nature of professional services performed;

- (67) Effective date of relationship or termination; and
- (78) Additional information that may be requested by the board.

17 CAR § 235-507. Disclosure of Referral ~~or recommendation~~ or referral between a licensee ~~or firm in which a licensee is an owner or employee~~ and a nonlicensed office or business ~~performing professional services with which the licensee or firm is associated.~~

(a) Any licensee ~~or registered firm~~ that accepts a client ~~that results~~ings from a recommendation or referral by a nonlicensed office or business with which the licensee or firm is associated shall disclose such association or ownership to the client at the time the client is accepted.

(b) Similarly, a licensee ~~or registered firm~~ that refers or recommends a client to a nonlicensed office or business with which the licensee or firm is associated must disclose that relationship to the client at the time of the referral or recommendation.

(c) No form is provided for such notices, but they must be in writing and delivered to the client.

17 CAR § 235-508. Notification to client of acceptance of commissions or referral fees.

(a) A licensee ~~or registered firm~~ that is paid or expects to be paid a commission, or who accepts a referral fee, shall disclose the existence of such commission or referral fee to the client at the time the referral is made.

(b) A licensee ~~or registered firm~~ who pays a referral fee to obtain a client shall disclose to the client the existence of such payment of the fee prior to accepting the client.

(c) No form is provided for such notices, but they must be in writing and delivered to the client.

17 CAR § 235-509. Communications.

(a) A licensee shall, when requested, respond to communications from the Arkansas State Board of Public Accountancy within thirty (30) days of the mailing of such communications by registered or certified mail.

(b) The Executive Director of the board may require a response earlier than thirty (30) days if he or she determines that an earlier response is necessary to prevent public harm.

17 CAR § 235-510. Failure to file tax returns.

The willful failure by the licensee to file an income tax return, including his or her own, and the resulting conviction or plea of guilty or nolo contendere in connection therewith, shall be considered conduct discreditable to the public accounting profession.

17 CAR § 235-511. Criminal convictions — Disciplinary actions.

(a)(1) A licensee who is convicted of or pleads guilty or nolo contendere to any crime other than a traffic violation, regardless of whether the adjudication of guilt or sentence is withheld, suspended, or deferred in any court of this state, another state, or the federal government, shall make a written report thereof to the Arkansas State Board of Public Accountancy within thirty (30) days after the conviction or plea.

(2) The report shall include:

- (A) The date of the offense and of the conviction or plea;
- (B) The name and address of the court;
- (C) The specific crime for which convicted or to which the plea is entered;
- (D) The fine, penalty, and/or other sanctions imposed; and
- (E) Copies of the charging document and judgment of conviction or other disposition, including probation or suspension of sentence.

(3) The report shall also include the licensee's explanation of the circumstances which led to the charge and conviction or plea, along with any other information which the licensee wishes to submit.

(b)(1) A licensee who after the initiation of an investigation, hearing, or other administrative action surrenders or who has a professional, vocational, or occupational

license, permit certification, or registration to practice public accountancy by an agency of any state or the federal government denied, revoked, suspended, or cancelled or who is subject to any sanctions, including probation, involving such license, permit certification, or registration shall make a written report thereof to the board within thirty (30) days after such action.

(2) The report shall include:

(A) The date of the action;

(B) The name and address of the regulatory agency which has taken the action; and

(C) Copies of documents pertaining thereto.

(3) The report shall also include the licensee's explanation of the circumstances which led to the action, along with any additional information the licensee wishes to submit.

(c)(1) An applicant for a license who has been convicted of or pleaded guilty or nolo contendere, as described in subsection (a) of this section, to any crime other than a traffic violation or who after initiation of an investigation, hearing, or other administrative action has surrendered or has had a professional, vocational, or occupational license, permit, certification, or registration denied, revoked, suspended, or canceled or who has been subjected to any sanctions, including probation, as described in subsection (b) of this section, involving such a license, permit, certification, or registration shall furnish the written report referred to in subsection (a) and/or (b) of this section to the board at the time the application is submitted if such action has already occurred.

(2) Otherwise, such report shall be made immediately after the action occurs.