



STATE OF NEBRASKA
BOARD OF PUBLIC ACCOUNTANCY

Rules of Professional Conduct Guidelines

Notice: Guidance Document

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirement or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.



STATE OF NEBRASKA
BOARD OF PUBLIC ACCOUNTANCY
Effective 07/14/2023

Rules of Professional Conduct Guidelines

The Guidelines reflect the current Rules of Professional Conduct (as revised, effective September 2019) applicable to licensed Nebraska CPAs. These Guidelines do not contain mandatory requirements for licensees, but are advisory in nature. Ultimately, it is the licensee's responsibility to take action in their professional activities that is in their best judgment consistent with these ethical rules. Please retain this document for future reference.

Declaration

Licensed Nebraska CPAs are subject to the Rules of Professional Conduct (Rules) contained in Title 288, Chapter 5. Such licensees may also be subject to other ethical rules, such the AICPA, the IRS, the SEC, and so on. The purposes of the Board in issuing these Guidelines include:

1. Protecting the public by providing licensed Nebraska CPAs and other interested parties with greater understanding, clarity and ease of application of the Rules to the various ethical and professional practice situations encountered in the practice of public accounting; and
2. Providing licensees and other interested parties with cross-references to other codes of professional conduct that address ethical and professional practice situations encountered in the practice of public accounting also addressed by the Rules.

Many states have adopted the AICPA Code of Professional Conduct (the Code) either substantially or in its entirety. Such adoptions essentially cede responsibility for overseeing the rules of professional conduct for CPAs in those jurisdictions to the AICPA. The Board concluded that adopting the Code in its entirety would not be in the best interests of the public in the state of Nebraska.

These Guidelines do not contain a comprehensive cross-referencing to all possible codes of conduct that a licensed Nebraska CPA might encounter in the course of practicing public accounting. The most common such codes that licensed Nebraska CPAs might encounter are referenced, however:

1. AICPA Code of Conduct;
2. The AICPA Statement on Standards for Tax Services (SSTs); the binding ethical rules applicable to all members of the AICPA when engaged in tax matters;
3. Circular 230, the binding rules applicable to CPAs, attorneys and enrolled agents representing a client for any matter over which Congress has made the IRS the expert agency for enforcement; and,
4. Pronouncements made by FASB, GASB on GAAP.

The Nebraska Public Accountancy Act, Sections 1.140, through 1.148, empowers the Board to initiate a disciplinary action on its own motion or upon complaint by any person. Board staff, members of the Board, and others regularly monitor activities of the Professional Ethics Executive Committee of the AICPA ("PEEC") and other bodies regulating the accounting profession (for example, the SEC, PCAOB, and the IRS) to determine if any disciplinary action of a Nebraska licensee is also warranted in addition to the action being taken by the other body. While consideration would be given to any such regulatory agency's determinations that certain actions might result in varying sanctions, ranging from loss of membership and good standing to disbarment, the Nebraska Board makes its own determination concerning potential disciplinary action of any affected Nebraska licensee under the Rules.

(effective 07/14/2023)

TABLE OF CONTENTS

	<u>Page</u>
1. Independence.....	4
a. Conflicts of Interest.....	4
b. Personal/Family Involvement with Clients.....	4
c. Provision of Non-attest Services to Attest Clients.....	4
2. Integrity and Objectivity.....	5
a. Gifts or Entertainment.....	5
b. Advocacy.....	5
c. Objectivity.....	6
3. Competency and Technical Standards.....	6
a. Competence.....	6
b. Technical Standards.....	6
4. Responsibility to Clients.....	7
a. Keeping Client Information Confidential.....	7
b. Providing Records to Clients.....	7
c. Contingent Fees.....	7
5. Advertising and Solicitation.....	8
6. Other Responsibilities and Practices.....	8
a. Acts Discreditable.....	8
b. Commissions and Referral Fees.....	9
7. AICPA Code Threats and Safeguards Approach.....	9
8. Other Applicable Regulatory Standards.....	9
a. Non-authoritative Guidance.....	9
b. Other Professional Standards.....	9

1. INDEPENDENCE

Chapter 5 §002 of the Rules govern the area of Independence. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

A significant portion of the Code is devoted to providing structure and guidance regarding independence. Code § 1.200 provides multiple interpretations of independence and addresses broad potential threats to independence such as: firm structure (§ 1.220); unpaid fees (§ 1.230); financial interests (§ 1.240); employee benefit plan participation (§ 1.250); loans, leases and guarantees (§ 1.260); family relationships with attest clients (§ 1.270); memberships (§ 1.280); actual or threatened litigation (§ 1.290); non-attest services (§ 1.295).

1a. Conflicts of Interest

Chapter 5 of the Rules does not stipulate specific rules on this issue. Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

The Code (at § 1.110) provides guidance on addressing conflicts of interest between the member and another party when providing professional services. Once the conflict has been identified and its potential impact on the member's ability to be independent has been evaluated, the Code suggests members disclose the conflict to the client and other relevant parties and obtain their consent to proceed with the services in light of the conflict. The SSTs do not contain specific standards addressing conflicts of interest in tax engagements, leaving members to follow the general rules of the Code. Circular 230 does contain a specific provision covering conflicts in § 10.29, which is less specific than the rules in the Code.

1b. Personal/Family Involvement with Clients

Chapter 5 of the Rules does not stipulate specific rules on this issue. Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

Code § 1.270.010 indicates that family members of a covered member of the AICPA must also comply with the independence rule of § 1.200.001. Examples in which family relationships with clients might impair the independence of a member include employment by the client, participation in client employee benefits plan, share-based compensation arrangements, direct ownership interests, and various financial interests. The Code provides interpretations in which certain such relationships would not impair independence. Licensees may consider the AICPA Code and Interpretations in analyzing whether family relationships with clients might impair independence.

1c. Provision of Non-attest Services to Attest Clients

Chapter 5 of the Rules does not stipulate specific rules on this issue; Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

Code § 1.295 contains provisions addressing the impact on the independence of a member who provides non-attest services to an attest client. The concerns in these cases are that the non-attest

services might create threats to independence through self-review, management participation or advocacy. The Code discusses safeguards that might be employed to minimize the potential threats.

2. INTEGRITY AND OBJECTIVITY

Chapter 5 §003 of the Rules govern the area of Integrity and Objectivity. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

The Code identifies Principles of Professional conduct in § 0.300. Included in this list are professional responsibilities, the public interest, integrity, objectivity, independence, due care, and the scope and nature of services. The Nebraska Rules do not segregate these key principles in a preamble section, but instead includes them in various other provisions, either in a specific section or as part of a broader section. The Code contains an Integrity and Objectivity Rule (§ 1.100.001) and the Nebraska Rules (§ 5.003) have a similar section which is worded very similarly to the Code. Areas covered by the Code include conflicts of interest, director positions, gifts and entertainment, knowing misrepresentations in the preparation of financial statements and records, subordination of judgment, client advocacy, and use of third-party service providers.

2a. Gifts or Entertainment

Chapter 5 of the Rules does not stipulate specific rules on this issue. Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

Code § 1.285 provides further guidance on offering or accepting gifts or entertainment during the pendency of the professional engagement. Although no specific examples of gifts or entertainment are provided, the interpretation does provide information for assessing the threats of undue influence, self-interest, and familiarity. Possible areas in which a licensee might take additional care in determining if there is a threat that cannot be mitigated or eliminated could include, for example, material and regular use of client sports tickets, golf and other club outings, and shared vacation facilities.

2b. Advocacy

Rule Ch. 5.003 does not address advocacy for clients in matters other than in tax practice. Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

The Code addresses advocacy in the context of creating a threat to integrity and objectivity (§ 1.140.010) but does not address advocacy in tax matters. The Internal Revenue Code (IRC) allows the IRS to impose tax penalties on taxpayers and tax return preparers for tax positions that do not meet the substantial authority standard, unless the position is reasonable and it is fully disclosed on the return. The Rule indicates the licensee may resolve issues in favor of the client if there is a reasonable basis for the (tax) position. The SSTs do acknowledge that advocacy is a responsibility in tax engagements in SSTs No. 1. That Statement indicates the member generally should only recommend positions that have a realistic possibility of success, which is a higher standard than is expected in Ch. 5.003. If the member concludes the position has a reasonable basis for success, it can be recommended to the client provided the client is advised to disclose the position on an applicable tax return. Circular 230, § 10.34(a), indicates the official position of the IRS is the advice should meet the reasonable basis standard.

2c. Objectivity

The Rules do not provide clarification about objectivity in § 5.003 other than cautioning against subordinating judgment to others. Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

The Code provides clarifying guidance in defining objectivity in § 0.300.050. The principles cited by the Code may resonate with Nebraska licensees in spite of the limited language provided in § 5.003 – Objectivity is a state of mind and a distinguishing feature of the profession. Maintaining objectivity requires continual assessment of the relationship with the client to determine if conditions have changed to render the member less objective. The Code principle of objectivity applies not only to members in public practice but also to those not in public practice.

3. COMPETENCE AND TECHNICAL STANDARDS

Chapter 5 §004 of the Rules govern the area of Competence and Technical Standards. The Rules (§ 5.004) do not contain a specific counterpart to this due care principle, although Rule 5.004 uses very similar language to that found in the Code. The following references to the Code are not binding on the Board. They are provided for convenient reference only.

The Code (§0.300.060.03) defines competence as a component to the due care principle. Due care requires a member to observe professional technical and ethical standards, to strive continually to improve competence and the quality of services, and to discharge responsibilities to the best of one’s ability. The Code indicates that due care implies a quest for excellence by discharging professional responsibilities with competence and diligence. The Rules indicate a licensee should only undertake engagements that can be completed with professional competence.

3a. Competence

Code § 0.300.060.03 indicates competence is achieved through the synthesis of education (both initial and continuing) and experience. It expects a commitment that continues throughout the member’s professional life. It recognizes that it is both an individual responsibility as well as a firm responsibility. Nebraska Rule 5.004.01 blends both the individual and firm expectations. Neither the Code nor the Rules create a specific expectation that the member or licensee be competent prior to agreeing to undertake the professional services, but both focus on the competence of the individual at the time the services are actually provided. Circular 230, § 10.35, speaks of a practitioner “becoming” competent by consultation with experts as well as by additional education.

3b. Technical Standards

Both the Rules (§ 5.004.02) and the Code (§ 1.310.001.01) expect members and licensees to apply auditing and financial accounting standards promulgated by the AICPA, the FASB and other similarly positioned standard setting bodies with generally recognized authority over the subject matter involved (e.g., GASB, etc.).

4. RESPONSIBILITY TO CLIENTS

Chapter 5 §005 of the Rules govern the area of Responsibility to Clients. The following references to the Code and the Internal Revenue Service rules or publications are not binding on the Board. They are provided for convenient reference only.

4a. Keeping Client Information Confidential

Rule 5.005.01 precludes licensees from disclosing confidential information to third parties unless approved by the client, other than as necessary to comply with valid judicial processes, or to facilitate quality review programs or disciplinary actions.

Similarly, the Code (§ 1.700.001) prohibits disclosure of confidential client information without the specific consent of the client, other than in certain judicial or other similar proceedings. The Internal Revenue Code § 7216 creates legal penalties for disclosing client tax return information to third parties without specific client consent.

Violation of the rule regarding disclosure of confidential information may result when:

1. the licensee, in the course of engaging in legitimate business practices which require providing third parties with access to the client information, fails to obtain appropriate client consent to disclose the information, or;
2. the licensee, in the course of an engagement, fails to properly supervise staff, resulting in improper disclosure of the protected client information.

4b. Providing Records to Clients

There is a significant difference between the Rules and the Code in regards to providing records to clients. Rule 5.005.02 indicates that, upon request, a licensee shall furnish to his client or former client, within a reasonable time after original issuance of the document, a copy of client tax returns; copy of the report or other document issued by the licensee; accounting records belonging to the client; and a copy of licensee's working papers related to the work or engagement regardless of unpaid fees.

Code in § 1.230.010.01 indicates that the existence of unpaid fees to a member for previously rendered attest services may create self-interest, undue influence, or advocacy threats to the member's compliance with the Independence rule. Code § 1.400.200.04 indicates that, unless a member and the client have agreed to the contrary, a member should return member-prepared records relating to completed work to the client except such records may be withheld if fees are due for that work product. However, § 1.400.200.02 indicates that members must comply with rules and regulations of authoritative bodies in regards to records.

4c. Contingent Fees

Rule 5.005.03 substantially restates the Code in applying the prohibition of contingent fees. However, Rule 5.005.03B requires specific documentation of commissions and referral fees arrangements with clients (set forth in Attachment 1 to Chapter 5). These agreements must be signed by the client and retained for five years, and are subject to random audit by the Nebraska Board of Public Accountancy.

Code § 1.510.001.01 prohibits contingent fees in most situations

5. ADVERTISING AND SOLICITATION

Chapter 5 §006 of the Rules govern the area of Advertising and Solicitation. The following references to the Code and the Internal Revenue Service rules or publications are not binding on the Board. They are provided for convenient reference only.

Rule 5.006 and Code § 1.600.001 address general advertising and forms of solicitation in similar manner. The Rules are more detailed in terms of what qualifies as false, fraudulent, misleading or deceptive conduct. The AICPA has several examples and formal interpretations contained in § 1.600 and following.

Recent practice developments have highlighted situations in which advertising and solicitation activities arise in previously unanticipated contexts. For example, alternate practice structure (e.g. CPA practice embedded within non-licensed firm) and providing non-attest and traditional accounting services (such as wealth management) within a CPA firm. The Code addresses alternate practice structures in § 1.220.020. The Board has previously issued guidance on acceptable forms of advertising within the context of such practice structures. See [“Guidelines for Firm Names and Advertising”](#). Firm ownership and registration requirements may also be implicated and should be reviewed by a practitioner.

6. OTHER RESPONSIBILITIES AND PRACTICES

Chapter 5 §007 of the Rules govern the area of Other Responsibilities and Practices. The following references to the Code and the Internal Revenue Service rules or publications are not binding on the Board. They are provided for convenient reference only.

6a. Acts Discreditable

Rule 5.007.01 is much less specific – it prohibits a licensee from committing an act that reflect adversely on the fitness of the licensee to engage in the practice of public accountancy.

Code § 1.400 prohibits members from performing acts discreditable to the profession. Specific examples provided by the Code of these acts include discrimination and harassment in employment; solicitation or disclosure of CPA exam questions or answers; failure to file a tax return or pay a tax liability; negligence in preparing financial statements or records; material departures from the requirements of government bodies, commissions or regulatory agencies; failure to adhere to GAAS in audits of governmental bodies; use of indemnification clauses in certain audits or other services governed by certain governmental bodies; improper use of confidential information obtained through employment or volunteer activities; false, misleading or deceptive acts in promoting or marketing professional services; and improper use of the CPA credential.

While the topic of communication to clients is not specifically addressed in the Code nor the Rules, it is the expectation of the Board that licensees communicate professionally and timely to their clients. It is not acceptable to avoid communicating with a client (via phone or email) when engaged in professional work. If additional time or information is needed to complete the engagement, that needs to be communicated in a timely manner with the client.

In determining if a licensee has committed an act discreditable to the profession, the Board may consider other professional standards, such as those referenced in section 8b, regardless of whether the other professional body has taken formal action to sanction the licensee. If another such professional body or a governmental body (such as a judicial authority or a regulatory agency) has commenced an inquiry concerning the licensee, the Board, in its discretion, may defer its own disciplinary actions pending the results of that inquiry.

6b. Commissions and Referral Fees

Both the Rules (5.007.02) and the Code (§ 1.520) constrain the use of commissions or referral fees. The language and restrictions are substantially the same. However, Rule 5.007.02D requires specific documentation of commissions and referral fees arrangements with clients (set forth in Attachment 1 to Chapter 5). These agreements must be signed by the client and retained for five years, and are subject to random audit by the Nebraska Board of Public Accountancy.

7. AICPA CODE THREATS AND SAFEGUARDS APPROACH

The Rules do not contain a threats and safeguards approach. The Board considers that approach to be a reasonable process and licensees are encouraged to apply similar approaches to potential ethical issues under the Rules.

The Code takes a threats and safeguards approach to helping members analyze potential ethical situations. Under this approach, there first is an analysis of whether the potential action creates a threat to independence or other ethical standard. The member then determines if there are any safeguard actions that can be taken to mitigate or eliminate the threat. If the threat can be mitigated or eliminated, then the member can proceed as intended. If it cannot be mitigated or eliminated, then the member must determine if they can continue with this engagement.

8. OTHER APPLICABLE REGULATORY STANDARDS

8a. Non-authoritative Guidance

Chapter 5 of the Rules does not stipulate specific rules on this issue. Licensees may want to review the Code to analyze the potential impact in such cases. The following references to the Code are not binding on the Board or the AICPA. They are provided for convenient reference only.

Code § 0.500 anticipates action by PEEC and other bodies in interpreting the Code as different situations arise. These interpretations are contained in the Code itself and may be considered in determining whether a particular action might be an ethical issue. Interpretive actions by other bodies, such as the IRS for Circular 230, would be correspondingly included in various official document sources for those bodies.

8b. Other Professional Standards

CPAs are subject to many other professional and legal standards as they practice public accountancy. For example, CPAs are subject to Circular 230 when it comes to practice before the IRS in representing clients. CPAs with publicly traded clients need to consider rules of practice promulgated by SEC and PCAOB. CPAs also must consider rules from GAO, Nebraska Department of Revenue, State Auditor's Office, Department of Labor, and other regulatory bodies specific to the subject matter of the

engagement. It is likely that one or more of these other bodies will have rules that might apply simultaneously with the rules of conduct contained in the Code and the Rules.