Council Approves Revised Conflicts of Interest Policy

At its meeting on January 30, 1996, Council approved a revision of the Section's policy on conflicts of interest, including conflicts related to governmental submissions. In view of its importance, the revised policy will be published in the Section Directory and in the Section newsletter.

The text of the revised Section of Taxation Policy on Conflicts of Interest is as follows:

Members of the Section of Taxation should always be mindful of their dual capacity; no member should permit the interest of a client to cause him or her to support or oppose within the Section a proposal that he or she would otherwise not support or oppose within the Section. This is not only a matter of ethical responsibility, but it is also a matter of enhancing the effectiveness and credibility of the Section.

Members of the Section should be mindful of ABA Model Rule 6.4, which provides that, “[w]hen the lawyer knows that the interests of a client may be materially benefited by a decision [of a law reform organization] in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.” See also, to the same effect, ABA Model Code, EC 8-4. Accordingly, when actively supporting or opposing a position within the Section, a member should determine that he or she acts out of personal conviction rather than client interest and should make disclosure where a client may be materially benefited as a consequence of such support or opposition. Disclosure should ordinarily be made by notifying the committee chair or other Section person responsible for the proposal that the member has a client interest. The member should not disclose the identity of the client or the nature of the engagement. In assessing these responsibilities, the member should take account of all client relationships of his or her firm to the extent actually known to the member. Members who contemplate making disclosure of client interest in accordance with this policy should be mindful of their responsibilities under ABA Model Rules 1.6 (confidentiality) and 1.7 (conflict of interest) or under comparable rules applicable in their jurisdiction of practice.

If a member (or the member’s firm to the member’s actual knowledge) has been engaged by a client to influence a government decision or policy determination on an issue that is also under consideration within the Section, such member shall not participate (or, upon receiving actual knowledge of such engagement, shall cease participation) in the preparation of Section material intended to be submitted to governmental personnel with respect to that issue. The member may, after disclosure as provided in the preceding paragraph, supply information or analysis related to the decision or determination for consideration by Section members who are preparing Section material. In applying this paragraph, good judgment is called for in identifying the scope of an issue and the member’s consequent disqualification. Some issues may be fundamental to the project, thus requiring complete disqualification; others may be narrow, warranting only limited preclusion. The term “material” as used in this paragraph consists of Section work product that is required under Section procedures to be submitted to the Committee on Government Submissions for review by it.

This policy applies to all Section projects, including, without limitation, comments on proposed or existing legislation, regulations, rulings or government policies. It is the special responsibility of the officers of each committee, in staffing a project, to give particular thought to the matter of actual or apparent conflicts of interest, not only to avoid potential criticism, but also to encourage the formulation in the product of a balanced view.

Members who encounter uncertainties in the application of this policy should consult with any officer or member of Council.

ABA Tax Section’s Distinguished Service Award For 1996

The Tax Section’s Distinguished Service Award for 1996 will be presented to Randolph W. Thrower at the May Meeting of the Section. Randolph, or Randy as he is known to his many friends, is the senior partner in the firm of Sutherland, Asbill & Brennan, Atlanta, GA. He was Chair of the Tax Section for two years in the 1960’s and has continued to be an active leader of the Section and the American Bar Association through the years. He served as President of the American Bar Foundation and was on its Executive Committee for ten years. He also served for many years as a member-at-large of the ABA House of Delegates, often receiving more votes for that position than any of the other elected delegates. He served as a member of the ABA Task Force on Minorities in the Law and on its Commission on Women in the Profession. The ABA recognized Randolph’s extensive public, professional and government service in 1993 when it awarded him its highest honor, the American Bar Association Medal. He has also worked with the courts and was the recipient of the Court of Federal Claims Special Service Award, given in recognition of his many contributions to that Court.

From 1969 to 1971, Randolph served as the Commissioner of Internal Revenue where he fought off attempts to use the Service for political purposes. He is presently the Chair of the Georgia Wilderness Institute, which provides education and rehabilitation...
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services for criminally delinquent youth. He has served as President of the Atlanta Bar Association, the Atlanta Lawyers Club and the Atlanta Legal Aid Society and chaired the Atlanta Committee of the Lawyers Committee for Civil Rights Under Law. He also chaired the State Bar of Georgia’s Committee on the Involvement of Women and Minorities in the Profession. He has been awarded a number of honorary degrees and has served as a Trustee on the Boards of several universities and colleges. Randolph served as Chair of the Ethics Committee of the City of Atlanta for 12 years and brought his considerable moral force to that highly visible position.

Randolph has consistently distinguished himself nationally, regionally and locally, and has been an effective advocate for the Tax Section and the Tax System. He has been a model for those who have worked with him in private practice, Section activities, ABA activities and the government. Having honored us by his association, leadership and service, it is only natural that Randolph would be the 1996 recipient of our Distinguished Service Award.

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of IRS-bashing “can only further erode voluntary compliance.” Jerry also speaks out on the subjects of interest “netting” and retroactive effective dates for new tax legislative proposals.

Tax reform is, of course, important to us as practitioners and to American society as a whole. The Tax Section’s collective experience can provide unmatched insight on tax reform issues. We would like to foster a dialogue on these issues in the Newsletter. If you write to us about tax reform or related subjects, we will try to publish at least representative letters in the next issue. So sit down for a moment and give us your thoughts. We look forward to hearing from you.

We are also continually looking for your insights on the current tax law and how it works in practice. We call these items “Points to Remember,” and we publish them in every issue. In this issue, the subjects include estate planning, trust income tax, prejudgment interest, and valuation of works of art. When you next come across something of interest, please think of us. It would be best to call me with the topic before you write, but, if it interests you, it will probably interest us as well.

Also in this issue, we report on news of two prominent members of our profession. Randolph Thrower has received the Tax Section’s Distinguished Service Award for 1996 (page 11). On a more solemn note, we include excerpts from Mortimer Caplin’s most moving eulogy for Former Chief Counsel and Assistant Attorney General (Tax), Mitchell Rogovin, who died in February (page 10). Although it may seem odd to mention these two stories together, there is an important link between them. The careers of both Mr. Thrower and Mr. Rogovin are inspiring, as models of combining success in the profession with awareness of public good.

Morton Zalutsky’s look into the Tax Section’s cyber-future (page 24) will cause some hearts to leap and others to sink a bit. According to Mort and the members of the Tax Section’s new Internet Subcommittee, the World Wide Web is where we are all headed. Clearly, with the Tax Section (even the Newsletter) coming to the WWW, we will have access to much more information, much more quickly than ever before.

You surely will want to review the materials on the 1996 Annual Meeting in Orlando, Florida (pages 20-23). (Materials on the upcoming May Meeting in Washington were published in the last issue.) Aside from Mickey Mouse and Epcot, the facilities for our meetings at Orlando are among the best in the country. Many details for the meetings are still being planned, but there will be lots to talk about and learn about.

See you in Washington and then in Orlando.

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ences between the parties. There has been a realignment in the parties since then, so that clearly the Republicans now are the conservative party, and the Democrats are the liberal party. But you had many, many really tough conservatives in the Democrat party in those days.

Question: Do you think the committee system has changed even further under the Gingrich-Army leadership?

I think we’ve got a stronger leadership than I have seen in the House, probably stronger than any time since Sam Rayburn. Now I didn’t serve under him so I don’t know that firsthand. But, there is significant strength in the leadership and as a result, the committee chairmen are not the same barons that they were during the time of Wilbur Mills when the committee chairmen had all the strength. The seniority system protected them totally and the speaker and the leadership could not make them do anything.

It was only after the seniority system was abolished in 1975 that the committee chairmen have had to accommodate the leadership. I remember a few times when Rostenkowski would tell me that he could make a deal with me on some issue and then he would come back and say that the leadership had told him he couldn’t do it. So, even as strong a chairman as he was, there was some weakening of the committee chairmen even then.

So the power of committee chairmen has been eroding ever since the seniority system was abolished. I voted to abolish the seniority system so I’m not speaking pejoratively about that, but it is responsible for some significant changes in the way things work.

Another great difference for us was that all the Republican Committee Chairmen signed the Contract With America. And the Committee Chairmen had the responsibility to implement the Contract. That took away tremendous flexibility in authority because you couldn’t go in there and say, “Well, now, I’m going to change the Contract With America.” Even now, so much of what is happening is a continuum of the Contract. For example, the balanced budget, and what is essential to make that happen, is a continuum of the Contract.

Question: Do you think that has been a strengthening element in Congress or a weakening element?

I think it was strengthening us because it really gave us a greater opportunity to stay together.