CALIFORNIA’S NEW RULES OF PROFESSIONAL CONDUCT

• A Comparison with Circular 230 and the ABA Model Rules

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What Happened & Why:

- Comprehensive set of new & amended Rules
  - 69 new Rules replaced our former 46 Rules
  - Adopts organization & numbering of ABA Model Rules
  - Effective November 1, 2018
What Do I Need to Know:

• Significant changes to California’s former Rules

• New ethical obligations imposed on California attorneys

• Certain ABA Model Rules *not* adopted in California
HYPOS
IT’S COMPLICATED: JOINT REPRESENTATION OF SPOUSES

• Tax Lawyer (“TL”) on and off advising for Husband (H) and Wife (W), including on their current estate plan.

• H, in a panic discloses a bank account in Israel used to bankroll his mistress (M) who lives in Jerusalem. W in the dark and bank will release the account to M when H dies.

• H has been procrastinating about VD programs and is scared to death.

• H wants to come clean with the IRS, but not with W since it will end the marriage.

• H wants TL to negotiate his disclosure to the IRS without W knowing.

May TL represent H during his bank account disclosure to the IRS?
SILENCE ISN’T ALWAYS GOLDEN: POTENTIAL CONFLICT BETWEEN CURRENT AND FORMER CLIENT

- Tax Lawyer ("TL") is retained by Current Client ("CC") to assist with implementing the terms of a settlement between Client and a former business partner ("FBP").
- TL did not represent either party during their dispute or the settlement negotiations.
- FBP engaged TL at earlier times to perform tax services but has no current client relationship with TL. FBP is unrepresented in this transaction.
- Settlement terms require a transfer of funds from CC to FBP - TL to facilitate using his client trust account.
- CC expects a current tax deduction for his settlement payment.
- TL contacts FBP to arrange delivery of the settlement funds.
- FBP goes to TL’s office. FBP states his intention that the funds will be a non-taxable return of capital.
- TL neither confirms nor denies FBP’s assumption when he hands FBP the check.

Did TL engage in ethical misconduct?
AIDING AND ABETTING: THE DISHONEST CLIENT

- Tax Lawyer (“TL”) hired to represent client during the examination of her 2017 return personal tax return.
- Client creates false invoices and makes corresponding adjusting journal entries in her QuickBooks without TL knowledge.
- Client provides these false records to TL who produces them to the IRS in response to an Information Document Request.
- Months later, the revenue agent issues administrative summonses to all of Client’s vendors for their records supporting Client’s income and expense numbers.
- Client panics and tells TL that the records produced to the IRS are false.

May TL continue to represent Client?
COMPROMISING INHERITANCE: POST-FORM 433 SHIFTS IN INCOME AND EXPENSES

• Client owes $800,000 in federal personal income tax liabilities. His account has been certified as seriously delinquent, subjecting his passport to revocation by the State Department.

• Client hires Tax Lawyer (“TL”) to help. TL assists Client with making an Offer in Compromise (“OIC”).

• After review of the Form 433A, OIC specialist proposes an alternative offer amount for the compromise. Client could pay the alternative amount by borrowing from friends.

• Before accepting the IRS alternate proposal, Client receives an unexpected inheritance that could fully satisfy the entire outstanding liability.

• The Client does not want to disclose the inheritance. OIC specialist has not asked for an updated Form 433A.

Must TL notify the IRS of the inheritance even if Client instructs him not to?
EXECUTIVE DECISION: JOINT REPRESENTATION OF BUSINESS AND OFFICERS

• Tax Lawyer (“TL”) is asked to represent USA, Inc. (“INC”) in connection with IRS collection efforts involving the company’s delinquent employment tax returns and tax payments.

• Engagement letter executed by INC. COO. Primary contact is INC. CFO. The COO, CFO and CIO are all officers, directors and shareholders of INC.

• INC got behind in its quarterly tax payments because the withheld funds were used to keep a major project afloat. CFO says she advised COO and stopped filing returns, hoping to stay under the IRS’ radar. CIO is unaware.

• CFO expects a large completion payment plus negotiated bonus from the project in 60 days. The project has taken longer than anticipated and the customer has been difficult. CFO “hopes” customer is not having financial difficulties but does not know.

• CFO wants TL to “buy some time”.

• TL submits a PoA for INC, signed by COO.

• RO says INC is an employment tax recidivist and refuses further discussion unless all the INC. officers and directors submit to an interview to determine who the responsible officers are.

• CFO says she wants TL to represent her during the RO interview and expects that COO and CIO will want TL to represent them as well.

Can TL continue to represent INC and represent any or all of CFO, COO and CIO during their interviews with the RO?
FAITHFUL HEART: DUTIES TO NON-CLIENTS

• Tax Lawyer (“TL”) retained to provide tax return preparation to a medical partnership, Heart Partners, including the calculation of each partner’s share of the partnership’s profits and the amount of each partner’s capital account in accordance with Heart Partners’ partnership agreement.

• Cardiologist Doctor (“CD”) was one of the partners in Heart Partners.

• CD suffered a cardiac event and ceased practicing in 2017.

• Heart Partners’ CEO informed TL that the partners had agreed to change the method of allocating the partners’ income and decided to allocate $50,000 to CD for 2017. TL was not asked to opine on any of these decisions by the remaining partners.

• CD’s 2017 Schedule K-1, prepared by TL, reflected a profit allocation of $50,000.

• In early 2018, over CD’s protests, Heart Partners bought out CD’s partnership interest for $80,000. TL was not consulted.

• In early 2019, Heart Partners instructed TL to prepare the 2018 partnership tax return and the partners’ K-1 statements to reflect the redemption of CD’s partnership interest with a resultant zero balance in CD’s capital account.

• CD sued TL for professional negligence on the theory that TL owed CD an implied duty of care based on TL’s representation of Heart Partners.

Was TL liable for breach of duty to CD for the manner in which TL handled Heart Partners’ partnership allocations following CD’s cardiac event?