

PRACTICE ADVISORY

The Case of the CPA Caught in the Middle

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The Dear Advisor series of articles helps members become better informed about the provisions of the Chartered Professional Accountants of Ontario Act, 2017, and the By-law and Regulations under that Act, as well as other ethical requirements under the CPA Code.

Dear Advisor:

Help! I've been caught in the middle of a family feud. I was asked to prepare the personal tax returns for a husband and wife earlier this year. The couple split up just before the returns were completed. I found out about it when the husband came into my office to pick up the completed returns; however, it did not occur to me to hold back his soon-to-be ex-spouse's return and I provided him with that as well. He held on to her return, and her return did not get filed in time – she had taxes owing and incurred late filing penalties and interest. What should I do?

– *Worried in Waterloo*

Dear Advisor:

A client brought in personal income tax information for herself, her husband, son and daughter. Her son is a university student and lives separately from his parents. I assumed that he knew and provided permission for his mother to bring in his information slips and have his return prepared. I completed the returns for the family and provided copies to the client for review and filing. Now her son claims that he did not provide his mother with his permission. He says that his mother reviewed his tax return and realized that he was making more money from his part-time jobs than she knew about, so she is refusing to contribute to his living expenses. He is livid and is holding me responsible. How do I avoid such situations in the future?

– *Worried in Warton*

Dear Worried in Waterloo and Warton:

Rule 208 *Confidentiality of Information*, which applies to members, students and firms, states that confidential information concerning the affairs of any client, former client, employer or former client shall not be disclosed, and provides clarification regarding situations where you are able to provide such disclosures. In situations like this, you should obtain consent from all family members, whether spouses or children, before releasing completed T1s to one of them. In addition, when you e-file personal income tax returns for a family of clients, you have to obtain a signed *T183 Information Return for Electronic Filing of an Individual's Income Tax and Benefit Return* form from each family member, including adult children who may or may not reside separately. One parent cannot sign off on behalf of the (non-minor) children for the sake of expediency in filing the returns.



These procedures prevent the release of confidential information to a person, even a family member, who should not have access to it. As illustrated by these examples, scenarios with unforeseen complications could arise very innocently – with one family member just trying to help another.

Note that there may also be legal implications in respect of the improper release of confidential information – you should consider obtaining legal advice.

– *Advisor*

Dear Advisor:

I have just received my public accounting licence and am ready to set up my own firm. I am currently working for a local Chartered Professional Accounting Firm, and would like to notify my clients that I am leaving. Can I do that?

– *Eager in Etobicoke*

Dear Eager:

The first thing you need to do is check your current employment contract. There may be a non-compete clause and other conditions which limit this type of correspondence, as well as restrict the location where you are considering setting up your practice. Even though the information you want to provide may be limited to just letting them know you are leaving, if the wording suggests that you are setting up your own practice and that you may contact them later, it could be problematic. Firms are not pleased with losing employees or clients, and pursue possible violations along these lines vigorously. It would be prudent to consult a lawyer.

The ethical concern generally raised when these former clients are contacted after you have left the firm is how you obtained the information used to contact them; in other words, are you using a client list which is confidential information and property of the Firm, your former employer, for your advantage – without the Firm's knowledge and consent? If so, this is contrary to Rule 208.2 *Confidentiality of Information*.

So what can you do? Rule 217.1 *Advertising* and Rule 217.2 *Solicitation* are both fairly broad and flexible regarding your ability to advertise your services and solicit business. Unless you have been restricted by your former employment contract in some manner as indicated above, it may be that you are able to clearly focus on a geographic segment or industry. This segment or industry may include some of your former clients, and as such, advertising to this segment may include some of your former clients. However, how you obtained their contact information to include them in your advertising campaign should not be in violation of Rule 208.

Also, depending on the nature of any restrictions, the message contained in the communications may need to make it clear which audience you are targeting (e.g. an industry or specific neighborhood – rather than one or two specific businesses that happen to be former clients).



You haven't asked for any information on how to set up a firm. If you have not started the process, the steps on how to set up a public accounting practice are outlined for you in the Public Practice section of CPA Ontario's website (under CPA Members) at www.cpaontario.ca.

– *Advisor*

For other scenarios regarding the application of Rule 208, refer to the article, *To Whom Can I Give Client Information?*. Members, students and firms should refer to the *CPA Ontario Member's Handbook* on CPA Ontario's website (under Stewardship of the Profession, Governance and Act, Bylaws and Regulations) for the complete wording of the By-law, Regulations and the CPA Code.

As no two situations are identical, CPA Ontario members are responsible for ensuring that their own situation complies with the CPA Code of Professional Conduct, By-law and Regulations.

For further guidance, members are encouraged to contact a Practice or Member Advisor:

Phone: 416-962-1841, ext. 4456 or toll free at 1-800-387- 0735, ext. 4456.

Email: practiceadvisory@cpaontario.ca or memberadvisory@cpaontario.ca.