

PRACTICE ADVISORY

Your Ability to Act as an Executor or Trustee for Your Clients

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Have you been asked by your client to be an executor of his/her will and/or a trustee of his/her estate? Is your ability to act in this manner impacted by Rule 204 “Independence” of the CPA Code of Professional Conduct (the “CPA Code”)? The answer is probably yes.

You need to consider that as a trustee or an executor you can influence the financial direction of the trust or estate, irrespective of your level of involvement or the number of trustees/executors with whom you share this responsibility. This could trigger issues with a number of aspects of the Independence Rule, such as:

- This role is not dissimilar to serving as an officer or director of an entity, since you have the ability to exercise influence over the financial and accounting policies of the trust or estate. Rule 204.4(18)(a) precludes a member or firm from performing “an assurance engagement for an entity if a member of the firm serves as an officer or director for the entity.”
- A trustee or executor can be viewed as having a management function, by having the ability to exercise authority or by being actively involved in decision-making. According to Rule 204.4(22)(a), “a member or firm shall not perform an assurance engagement for an entity if, during the engagement period, a member or firm makes a management decision or performs a management function”.
- According to Rule 204.4(1)(b), a member or student is not allowed to participate on an assurance engagement if the member or firm, or his/her immediate family, holds, as a trustee, a direct or indirect financial interest in the client. Per paragraph 4 of the Guidance to Rule 204.4(1) to (6), this is viewed no differently than holding the interest as the beneficiary.
- There are further restrictions on the ability of the office of the firm to complete an assurance engagement if the member involved is a partner; Rule 204.4(4) states that “a member who is a partner of a firm and who holds, or whose immediate family holds, a direct financial interest or a material indirect financial interest in an audit or review client shall not practise in the same office as the lead engagement partner for the client.”
- The basic rule of thumb test of how a reasonable observer would view the relationship should also be applied.

Is the nature of the threat such that safeguards could be introduced to reduce the threats to an acceptable level? No, there are generally no safeguards for these types of financial interest and self-review threats, only specific prohibitions.

Your options are limited, so what role – if any – can you play? One possibility, if you want to continue providing assurance services rather than acting as a trustee, is to take on an advisory role to the trustees that involves no decision-making power. You will also need to assess whether you have inadvertently taken on a de facto decision-making role. Each situation must be reviewed based on its



own merits within the independence rule framework. Another possibility to consider is whether someone who is no longer associated with your firm could be appointed, such as a retired partner. You would need to evaluate the level of association that the retired partner has with the firm. For more information on retired members, refer to the information set out in the Guidance related to the definition of “member of a firm” in the Definitions section of Rule 204. Remember to document the scenario, your evaluation and your conclusions in your files, and also make sure that firm policies are otherwise being met.

In addition to the limitations regarding assurance engagements, you may also be precluded from providing other assurance services that require you to be independent. You could, however, provide non-assurance services that do not require the member or firm to be independent, such as compilation engagements, as long as the nature of the relationship is described in the report or notes to the financial statements. For further information refer to Rule 204.10. Note that if you accept the appointment, there is also the possibility of triggering conflict of interest issues if there are multiple beneficiaries who are your clients and conflicts arise, refer Rule 210 “Conflicts of Interest”.

Another consideration is that there are limitations on executor fees. Complications that arise could result in less than a full recovery of a CPA’s standard rates. Remember that an executor’s role involves getting control of and managing property of the deceased. This also means dealing with any skeletons left in the closet. Do you really want this responsibility, unless you have a close personal relationship with this client?

You may think you can postpone consideration of these issues since your assurance client who has asked you to be an executor or trustee is still alive. However, the independence issue will arise upon your client’s death. At this time, it will be too late for your client to select an alternative executor if you choose to continue to provide the assurance services. Be proactive and make these decisions now.

When you have accepted a role as trustee or executor, please keep in mind other Rules of the CPA Code, such as Rules 212.1 and 212.2 that discuss handling of trust funds and other property and handling property of others.

Additional steps you may want to take before accepting a role as a trustee or executor include:

- Checking whether your role falls within the parameters of your professional liability insurance policy, or whether additional insurance coverage is otherwise in place or prudent to obtain; and
- Possibly consulting with a lawyer to make sure you are aware of all of your legal responsibilities.

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:
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