

1 Board of Accountancy

2

3 Adopted Permanent Rules Relating to the Code of Professional
4 Conduct

5

6 Rules as Adopted

7

ADMINISTRATION

8 1100.0100 DEFINITIONS.

9 Subpart 1. **Scope.** For the purposes of this chapter, the
10 terms in this part have the meanings given them.

11 Subp. 1a. **AICPA or institute.** "AICPA" or "institute"
12 means the American Institute of Certified Public Accountants.

13 Subp. 1b. **Applicant.** "Applicant" means a person applying
14 to take the uniform Certified Public Accountant examination.

15 Subp. 1c. **Board.** "Board" means the Minnesota Board of
16 Accountancy.

17 [For text of subps 2 and 3, see M.R.]

18 Subp. 3a. **Certificate holder.** "Certificate holder" means
19 a person who has passed the uniform Certified Public Accountant
20 examination and the Minnesota ethics examination and is not
21 licensed.

22 Subp. 3b. **Client.** "Client" means the person or entity
23 which retains a certified public accountant, a licensed public
24 accountant, or the accountant's firm, engaged in the practice of
25 public accounting, for the performance of professional
26 accounting services.

27 [For text of subp 4, see M.R.]

28 Subp. 4a. **Enterprise.** "Enterprise" means any person or
29 entity, whether organized for profit or not, for which a CPA or
30 LPA provides services.

31 Subp. 4b. **Firm.** "Firm" means a partnership, professional
32 corporation, limited liability company, limited liability
33 partnership, or association engaged in the practice of public
34 accounting, including individual partners or shareholders.

35 Subp. 4c. **Financial statements.** "Financial statements"

1 means statements and footnotes related to the statements that
2 purport to show financial position or results of operation which
3 are related to a point in time or periods of time, or statements
4 of cash flow, which relate to periods of time, and statements
5 which use cash or other incomplete basis of accounting. Balance
6 sheets, statements of income, statements of retained earnings,
7 statements of cash flow, and statements of changes in owners'
8 equity are financial statements.

9 Incidental financial data included in management advisory
10 services reports to support recommendations to a client, and tax
11 returns and supporting schedules do not, for this purpose,
12 constitute financial statements, and the statement, affidavit,
13 or signature of preparers required on tax returns neither
14 constitutes an opinion on financial statements nor requires a
15 disclaimer of such opinion.

16 Subp. 5. In public practice. "In public practice" means a
17 CPA or LPA individually or a CPA or LPA firm that performs
18 professional accounting services for a fee within this state.

19 [For text of subps 6 and 7, see M.R.]

20 Subp. 7a. Licensee. "Licensee" means a person holding an
21 active or inactive license issued under Minnesota Statutes,
22 section 326.20, subdivision 1.

23 [For text of subps 8 and 9, see M.R.]

24 Subp. 10. Practice of public accounting. "Practice of
25 public accounting" means the performance or the offering to
26 perform by a person or firm holding itself out to the public as
27 a licensee, for a client or potential client, of one or more
28 kinds of services involving the use of accounting or auditing
29 skills, including the issuance of reports on financial
30 statements, or of one or more kinds of management advisory,
31 financial advisory or consulting services, or the preparation of
32 tax returns or the furnishing of advice on tax matters.

33 Subp. 11. Professional accounting services. "Professional
34 accounting services" means one or more types of services
35 performed in the practice of public accounting.

1 1100.0200 INTERPRETATION OF RULES.

2 [For text of subpart 1, see M.R.]

3 Subp. 2. Interpretation powers of board. Nothing
4 contained in this chapter shall be deemed to prohibit or limit
5 in any way the exercise by the board of powers granted to it by
6 Minnesota Statutes, sections 319A.01 to 319A.22; 326.17 to
7 326.229; 326.53; and 214.001 to 214.12.

8 [For text of subps 2a and 3, see M.R.]

9 1100.0600 COMMUNICATIONS.

10 An applicant, certificate holder, or licensee shall respond
11 to communications from the board, committees of the board, or
12 the attorney general on behalf of the board within 30 days of
13 the mailing of communications, unless an earlier response is
14 requested within the communications. An applicant, certificate
15 holder, or licensee shall appear before the board, committees of
16 the board, or the attorney general on behalf of the board when
17 requested to do so and provide copies of all pertinent records,
18 including handwriting samples, to assist the board in its
19 deliberations. Communications should be addressed to "Executive
20 Secretary, Board of Accountancy."

21 1100.0650 AGREEMENT TO OBSERVE CODE.

22 The act of filing an application for examination,
23 certification, or licensure constitutes an agreement upon the
24 part of the applicant to observe the Code of Professional
25 Conduct, parts 1100.4000 to 1100.6100. Also, in the practice of
26 public accounting and in rendering professional accounting
27 services, a CPA and LPA shall adhere to the code.

28 CODE OF PROFESSIONAL CONDUCT

29 1100.4000 AUTHORITY FOR RULES.

30 Parts 1100.4000 to 1100.6100 are adopted under the
31 authority granted by Minnesota Statutes, section 326.18, which
32 delegates to the board the power and duty to make rules of
33 professional conduct.

34 1100.4200 SCOPE OF CODE OF PROFESSIONAL CONDUCT.

1 Subpart 1. **Limitations.** The rules of professional conduct
2 which follow apply to all services performed in the practice of
3 public accounting including tax and management advisory services
4 except:

5 [For text of item A, see M.R.]

6 B. that a licensee who is practicing outside the
7 United States shall not be subject to discipline for departing
8 from parts 1100.4000 to 1100.6100 so long as the licensee's
9 conduct is in accord with the rules of the organized accounting
10 profession in the country in which the licensee is practicing.
11 However, where a licensee's name is associated with financial
12 statements in such a manner as to imply that he or she is acting
13 as an independent public accountant and under circumstances that
14 would entitle the reader to assume that United States practices
15 were followed the licensee shall comply with the requirements of
16 parts 1100.4800 and 1100.4900.

17 A licensee engaged in the practice of public accounting
18 shall observe all the rules of professional conduct. An
19 individual with an inactive license or a retiree not engaged in
20 the practice of public accounting shall observe only parts
21 1100.0600, 1100.4300, and 1100.4500 since all other rules of
22 professional conduct relate only to the practice of public
23 accounting.

24 [For text of subp 2, see M.R.]

25 1100.4300 ACTS DISCREDITABLE.

26 Subpart 1. **Generally.** A licensee shall not commit an act
27 discreditable to the profession. Parts 1100.4000 to 1100.6100
28 do not comprise all acts that may be considered incompatible
29 with the obligations and responsibilities imposed by
30 professional status or discreditable or harmful even though not
31 specifically mentioned or described in this part. Any licensee
32 may be censured, suspended, or expelled for cause by the board,
33 after due opportunity of a hearing upon charges, whether or not
34 the alleged misconduct is specifically enumerated or described
35 in this part.

1 Subp. 2. **Discrimination in employment practices.**
2 Discrimination in employment that violates Minnesota Statutes,
3 section 363.03, is presumed to constitute an act discreditable
4 to the profession.

5 Subp. 3. **Negligence in preparation of financial statements**
6 **or records.** A licensee who through negligence makes, permits,
7 or directs another to make false and misleading entries in the
8 financial statements or records of an entity shall be considered
9 to have committed an act discreditable to the profession.

10 Subp. 4. **Attest or similar services.** When a licensee
11 agrees to perform an attest or similar service for the purpose
12 of reporting to governmental bodies, commissions, or regulatory
13 agencies, the licensee must follow their requirements, in
14 addition to the generally accepted auditing standards
15 incorporated by reference in part 1100.4650, where applicable.
16 Failure to follow the requirements is an act discreditable to
17 the profession, unless the licensee discloses in the licensee's
18 report that the requirements were not followed and gives the
19 reasons.

20 1100.4400 INDEPENDENCE.

21 Subpart 1. **Financial statements.** A licensee shall be
22 independent when the licensee or the licensee's firm performs:

- 23 A. an audit or review of a financial statement;
24 B. a compilation of a financial statement when the
25 licensee expects, or reasonably might expect, that a third party
26 will use the financial statement and the licensee's compilation
27 report does not disclose a lack of independence; or
28 C. an examination of prospective financial
29 information.

30 Subp. 2. **Conflicts of interest.** Independence shall be
31 considered to be impaired if, for example, a licensee had any of
32 the following transactions, interests, or relationships:

- 33 A. While providing professional accounting services
34 for the client, or at the time of expressing an opinion, a
35 licensee or a licensee's firm:

1 (1) had or was committed to acquire any direct or
2 material indirect financial interest in the enterprise;

3 (2) was a trustee of any trust or executor or
4 administrator of any estate if such trust or estate had or was
5 committed to acquire any direct or material indirect financial
6 interest in the enterprise;

7 (3) had any joint, closely held business
8 investment with the enterprise or with any officer, director, or
9 principal stockholder that was material in relation to the
10 licensee's net worth or to the net worth of the licensee's firm;
11 or

12 (4) had any loan to or from the enterprise or any
13 officer, director, or principal stockholder of the enterprise.

14 B. During the period covered by the financial
15 statements, while providing professional accounting services for
16 the client, or at the time of expressing an opinion, a licensee
17 or a licensee's firm:

18 (1) was connected with the enterprise as a
19 promoter, underwriter, or voting trustee, as a director or
20 officer, or in any capacity equivalent to that of a member of
21 management or an employee; or

22 (2) was a trustee for any pension or
23 profit-sharing trust of the enterprise.

24 Items A and B are examples and are not intended to be
25 all-inclusive.

26 1100.4500 INTEGRITY AND OBJECTIVITY; CONFLICT OF INTEREST.

27 A. In the performance of any professional accounting
28 services, a licensee shall maintain objectivity and integrity,
29 shall be free of conflicts of interest, and shall not knowingly
30 misrepresent facts or subordinate his or her judgment to others.

31 B. A licensee who knowingly makes, or permits or
32 directs another to make, false and misleading entries in an
33 entity's financial statements or records shall be considered to
34 have knowingly misrepresented facts.

35 C. A conflict of interest may occur if a licensee

1 performs a professional accounting service for a client or
2 employer, and the licensee or the licensee's firm has a
3 significant relationship with another person, entity, product,
4 or service that could be viewed as impairing the licensee's
5 objectivity. If this significant relationship is disclosed to
6 and consent is obtained from the client, employer, or other
7 appropriate parties, this part shall not operate to prohibit the
8 performance of the professional accounting service.

9 D. Certain professional engagements require
10 independence. Independence impairments cannot be eliminated by
11 disclosure and consent.

12 1100.4650 INCORPORATION BY REFERENCE.

13 For the purposes of parts 1100.4300, 1100.4700, 1100.4800,
14 and 1100.4900, the following documents are incorporated by
15 reference, are subject to frequent change, and are available
16 through the state law library:

17 A. AICPA Professional Standards, Volumes 1 and 2,
18 published for the American Institute of Certified Public
19 Accountants by Commerce Clearing House, Inc. (June 1, 1993);

20 B. Current Text, Accounting Standards, published by
21 the Financial Accounting Standards Board (June 1, 1993); and

22 [For text of item C, see M.R.]

23 1100.4900 ACCOUNTING PRINCIPLES.

24 A licensee shall not express an opinion that financial
25 statements are presented in conformity with generally accepted
26 accounting principles if the statements contain any departure
27 from accounting principles in AICPA Professional Standards,
28 Volume 1 and 2, or Current Text, Accounting Standards, as of
29 June 1, 1993, incorporated by reference in part 1100.4650, item
30 A or B, which has a material effect on the statements taken as a
31 whole, unless the licensee can demonstrate that due to unusual
32 circumstances the financial statements would otherwise have been
33 misleading. In such cases the licensee's report must describe
34 the departure, the approximate effects, if practicable, and the
35 reasons why compliance with the principle would result in an

1 otherwise misleading statement.

2 1100.5100 CONFIDENTIAL CLIENT INFORMATION.

3 A licensee shall not disclose any confidential information
4 obtained in the course of a professional engagement except with
5 the consent of the client.

6 This part shall not be construed to relieve a licensee of
7 the obligation under parts 1100.4800 and 1100.4900, to affect in
8 any way compliance with a validly issued subpoena or summons
9 enforceable by order of a court, to prohibit review of a
10 licensee's professional practices as part of voluntary quality
11 review under board authorization or to preclude a licensee from
12 responding to any inquiry made by the board, under state
13 statutes.

14 Members of the board and professional practice reviewers
15 under board authorization shall not disclose any confidential
16 client information which comes to their attention from licensees
17 in disciplinary proceedings or otherwise in carrying out their
18 official responsibilities. However, this prohibition shall not
19 restrict the exchange of information with an aforementioned duly
20 constituted investigative or disciplinary body.

21 This prohibition shall also not be construed to prohibit
22 the review of a professional CPA or LPA practice.

23 A review of a CPA's or LPA's professional practice is
24 authorized to include a review in conjunction with a prospective
25 purchase, sale, or merger of all or part of the practice. The
26 licensee must take appropriate precautions, for example, through
27 a written confidentiality agreement, so that the prospective
28 purchaser does not disclose any information obtained in the
29 course of the review, since the information is deemed to be
30 confidential client information.

31 Licensees reviewing a practice in connection with a
32 prospective purchase or merger shall not use to their advantage
33 nor disclose any confidential client information that comes to
34 their attention.

35 1100.5300 FURNISHING INFORMATION TO CLIENTS.

1 Retention of client records after a demand is made for them
2 is an act discreditable to the profession.

3 A client's records are any accounting or other records
4 belonging to the client that were provided to the licensee by or
5 on behalf of the client. If an engagement is terminated prior
6 to completion, the licensee is required to return only client
7 records.

8 A licensee's workpapers, including, but not limited to,
9 analyses and schedules prepared by the client at the request of
10 the licensee, are the licensee's property, not client records,
11 and need not be made available.

12 In some instances a licensee's workpapers contain
13 information that is not reflected in the client's books and
14 records, with the result that the client's financial information
15 is incomplete. This includes:

16 A. adjusting, closing, combining, or consolidating
17 journal entries; and

18 B. information normally contained in books of
19 original entry and general ledgers or subsidiary ledgers.

20 In these instances when an engagement has been completed, the
21 information must also be made available to the client upon
22 request. However, the licensee may require that fees due the
23 licensee with respect to the completed engagements be paid
24 before the information is provided.

25 Once the licensee has complied with the requirements in
26 this part, the licensee need not comply with any subsequent
27 requests to again provide the information.

28 1100.5800 COMMISSIONS AND REFERRAL FEES.

29 Subpart 1. Prohibited commissions. A licensee shall not
30 for a commission recommend or refer to a client any product or
31 service, or for a commission recommend or refer to any product
32 or service to be supplied by a client, or receive a commission,
33 when the licensee or the licensee's firm also performs for that
34 client:

35 A. an audit or review of a financial statement;

1 B. a compilation of a financial statement when the
2 licensee expects, or reasonably might expect, that a third party
3 will use the financial statement and the licensee's compilation
4 report does not disclose a lack of independence; or

5 C. an examination of prospective financial
6 information.

7 This prohibition applies during the period in which the
8 licensee is engaged to perform any of the services listed in
9 items A to C and the period covered by any historical financial
10 statements involved in such listed services.

11 Subp. 2. Disclosure of permitted commissions. A licensee
12 who is not prohibited by this part from performing services for
13 or receiving a commission and who is paid or expects to be paid
14 a commission shall disclose that fact to any person or entity to
15 whom the licensee recommends or refers a product or service to
16 which the commission relates.

17 Subp. 3. Referral fees. Any licensee who accepts a
18 referral fee for recommending or referring any service of a CPA
19 or LPA to any person or entity or who pays a referral fee to
20 obtain a client shall disclose such acceptance or payment to the
21 client.

22 1100.5850 CONTINGENT FEES.

23 A licensee shall not:

24 A. perform for a contingent fee any professional
25 accounting services for, or receive such a fee from, a client
26 for whom the licensee or the licensee's firm performs:

27 (1) an audit or review of a financial statement;

28 (2) a compilation of a financial statement when
29 the licensee expects, or reasonably might expect, that a third
30 party will use the financial statement and the licensee's

31 compilation report does not disclose a lack of independence; or

32 (3) an examination of prospective financial
33 information; or

34 B. prepare an original or amended tax return or claim
35 for a tax refund for a contingent fee for any client.

1 The prohibition in item A applies during the period in
 2 which the licensee or the licensee's firm is engaged to perform
 3 any of the services listed in item A and the period covered by
 4 any historical financial statements involved in the listed
 5 services.

6 Except as stated in the next sentence, a contingent fee is
 7 a fee established for the performance of any service pursuant to
 8 an arrangement in which no fee will be charged unless a
 9 specified finding or result is attained or in which the amount
 10 of the fee is otherwise dependent upon the finding or result of
 11 the service. Solely for purposes of this part, fees are not
 12 regarded as being contingent if fixed by courts or other public
 13 authorities or, in tax matters, if determined based on the
 14 results of judicial proceedings or the findings of governmental
 15 agencies.

16 A licensee's fees may vary depending, for example, on the
 17 complexity of services rendered.

18

19 RENUMBERER. The parts in column A shall be renumbered as shown
 20 in column B.

21	Column A	Column B
22		
23	1100.6000	1100.1902
24	1100.4600	1100.4950
25		

26 REPEALER. Minnesota Rules, parts 1100.3800; 1100.3900;
 27 1100.5200; 1100.5400; 1100.5500; 1100.5600; 1100.5900; and
 28 1100.6200, are repealed.