

Avoiding conflicts of interest requires diligence

By MIKE COSTANZA - 9/16/2016

Legal and accounting firms must constantly guard against conflicts of interest.

"You never know what's going to come up," says Scott Piper, a partner at Harris Beach PLLC.

When not appropriately acted upon, a conflict of this kind can produce a host of problems for the individual concerned—from the loss of a professional reputation to jail time. The firm involved could lose clients or revenue and even be forced to close.

According to Richard Beers, a partner at Phillips Lytle LLP, the broadest definition of a conflict of interest for the legal profession is "when a firm represents a current client in a matter that's adverse to another current client, or in some cases a former client."

"You can't serve both clients," he explains.

And the situations that can produce such clashes are not always obvious to the untutored eye. A conflict could occur if a medical group hires an attorney to formulate an agreement governing how existing partners leave the practice and new ones enter it, for example.

"You could have one partner who's older and near retirement and a much younger partner entering the practice, and they may have very different interests that they want to protect in the negotiation of that agreement," Beers says.

In that scenario, while the attorney could represent the group, the individual partners would need to hire their own lawyers to act for them.

Accountants define conflicts of interest slightly differently.

"A general definition of conflict of interest is any time there's anything that looks like it could impair judgment because of a personal interest of some sort," says Heidi Tribunella, clinical associate professor of accounting at the Simon Business School.

This broader view results in part from the role that accountants play in the financial marketplace. Unlike attorneys, who act for their clients only, accountants represent not only the firms they work for as employees or contractors, but also those whom their decisions might affect, from a company's shareholders to the general public.

"At the core of business is this trust, and if there isn't any trust in transactions, then we certainly have jeopardized, if not undermined, free enterprise," says Marcia O'Brien, associate professor of accounting at St. John Fisher College.

In this context, conflicts of interest can take many forms and arise both within and outside of a company, according to O'Brien. In order to avoid them, a company's accountants must not be involved in decisions in which they have personal interests or "inside" information that is not available to all. They must also refuse to partake in decisions in which they might be able to exert undue influence to the detriment of others.

An accountant who sits on a company's board could encounter all three factors.

"If your uncle owns a construction company and you sit on the committee to review new bids for construction, you should recuse yourself," O'Brien says.

On the other hand, an accountant who works for a human services company and also sits on a nonprofit's board should not be involved in that board's deliberations regarding whether to hire his or her company. Even seemingly innocuous activities should be squeaky clean.

"If they're recommending a certain software to a client, they're not allowed to get, say, a commission," Tribunella explains.

Some accounting positions have tougher conflict-of-interest rules than others; those who do audits must meet particularly high standards. All of the standards rise as you advance within a firm.

"Entry-level staff people do not have the same type of rules a partner or manager would have, because (partners and managers) have more oversight and authority over the audits," Tribunella says.

Accountants and attorneys begin learning how to avoid conflicts of interest in the professional ethics courses they take while acquiring their accounting or law degrees. They must then put that knowledge to use if they wish to pass a bar or CPA exam, though their education doesn't stop there. Both groups of professionals must take annual continuing education courses in order to work in their fields.

"All CPAs in New York State are required every three years to have four hours of ethics training in their continuing professional education," Tribunella says. "That ethics training goes through all of the different rules and codes of conduct and conflicts of interest that come up."

Many accounting and law firms also offer additional in-house training in such matters. As a member of Harris Beach's Risk Management Committee, Piper travels to the firm's many offices to teach about ethical issues—including conflicts of interest.

In addition to training their staffs to avoid these kinds of problems, law firms use sophisticated computer programs to detect them. They begin by gathering all the information possible regarding those who are or could be involved in their cases.

"Every transaction that we're involved with, every relationship that we have, including employees and their spouses, and everything we've ever dealt with, all of that information goes into a database," Beers says.

Accounting firms follow suit. During her time at one prestigious accounting firm, Tribunella had to provide a complete picture of her family's finances and update it annually. Everything from her and her husband's retirement accounts to the gift Tribunella's son received as a baby went into the company's database.

"My son had six shares of Disney stock I had to disclose," she says.

Should an accountant be found to have a personal conflict of interest—say, because of an investment the individual has made—the employee would have to make a decision.

"You usually have maybe 30 days to resolve the issue," Tribunella says. "You either have to get rid of the investment or move off the client."

A law firm's management usually takes up any actual or potential conflicts of interest that emerge. Piper and other members of Harris Beach's Risk Management Committee regularly participate in such discussions.

"We advise partners and management on those issues," he says. "Like in most firms, it's a collaborative decision."

Some conflicts are not serious enough to prevent a law office from taking on a client. Phillips Lytle often represents local commercial banks and the developers who are trying to float loans from those banks without violating ethical canons or the law. In such cases, the firm notifies the parties involved of the conflict and obtains their written consent to continue representing its client.

"As long as we aren't representing the borrower and the lender in the same transaction, everybody's OK with it," Beers says.

In other situations, even written consent won't cut it.

"We just know we're not fulfilling our duty to either party by representing both of them," Beers says. "We just absolutely won't go near it."

Accounting firms take similar steps when encountering a conflict of interest.

"Usually, there's offices—maybe not at the local office but national offices—that look at these things and make determinations," Tribunella says.

According to Tribunella, firms use fairly strict standards when doing so, especially when audits are concerned.

"You have to be independent in fact and appearance," she says.

However accounting and legal firms deal with conflicts of interest, they need to do so carefully.

"You've got to uphold your firm's reputation," Piper says.

Mike Costanza is a Rochester-area freelance writer.