
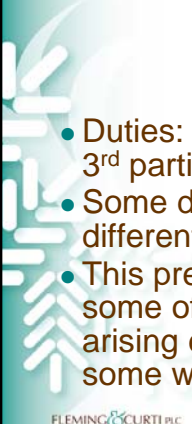


Ethical Issues for CPAs, Financial Planners & Lawyers

Prof. Rebecca C. Morgan
Stetson Law
&
Robert B. Fleming, CELA




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Professionals

- Duties: to clients, to profession, to 3rd parties & to general public.
- Some duties similar & others, different.
- This presentation will review some of the more frequently arising ethical issues & suggest some ways to respond.



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In This Session We Plan to Cover

- Who is the Client?
- Fiduciary relationships.
- Confidentiality.
- Truthfulness.
- What is the Practice of Law.
- Duty to Report (abuse, neglect or exploitation).
- Clients with diminished capacity.



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Learning Objectives At the End of This Session You Will Be Able to:

- Understand some common ethical situations you face.
- Distinguish among the ethical principles governing different professional groups.
- Be able to identify potential conflicts of interest.
- Place emphasis on client identification.
- Respond appropriately when faced with clients who may be victims of adult abuse.
- Use the responders!

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Who's here? You are a ...

1. CFP™
2. financial planner, but not a CFP™
3. CPA
4. non-CPA accountant
5. trust officer
6. lawyer
7. legal assistant
8. [something else]

Profession	Percentage
CFP Financial Planner	14%
CPA	25%
non-CPA accountant	0%
Trust Officer	7%
Lawyer	41%
Legal Assistant	4%
something else	5%

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Fiduciaries

- A fiduciary relationship implies the highest standard of care and duty
- A fiduciary must always put her principal's interests above her own, and may not profit from the relationship (except by fees)
- A fiduciary must disclose all relevant information to the principal
- A fiduciary must not allow a conflict between her own interests and those of her principal

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Which of these has a legally cognizable fiduciary duty?

1. A lawyer
2. A financial planner
3. A Certified Public Accountant
4. A CFP™
5. A lawyer or a CFP™
6. All of the above

Option	Percentage
A lawyer	7%
A financial planner	0%
A Certified Pub...	0%
A CFP	0%
A lawyer or a...	16%
All of the above...	78%

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Lawyers as Fiduciaries

- Ethical Rule 1.8, comment 17:
“The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal...”
- *Matter of Moak*, 205 Ariz. 351 (2003): lawyer’s wife loans plaintiff \$13,000 at 25% interest
- *Matter of Murphy*, 188 Ariz. 375 (1997): lawyer uses confidential info in business dealings with clients

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CPAs as Fiduciaries

- AICPA: “While an accountant normally is not considered to be a fiduciary to his or her clients, the AICPA Professional Code of Conduct embodies standards of conduct which are closely analogous to a fiduciary relationship—objectivity, integrity, free of conflicts of interest and truthfulness.” No fiduciary relationship for audits; possible fiduciary when providing tax advice
- Standards:
 - Expertise
 - Trust and confidence
 - Dependence

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Financial Planners as Fiduciaries

- Investment advisors v. broker-dealers
 - Inv. Adv. Act of 1940: fiduciary duty
 - FINRA: suitability obligation
- CFP™ Standards of Professional Conduct Rule 1.4: "A CFP™ shall at all times place the interest of the client ahead of his or her own."
- NAPFA Oath: "The advisor shall ... act in good faith and in the best interests of the client." Disclosure, avoid conflicts, fee-only

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Reporting Elder Abuse?

- Jane Smith, your long time client, suddenly seems to be running out of money; a number of her bills are now delinquent. When you ask what has happened with her finances, Jane gives a vague explanation and refers to a grandson Bud who keeps "stopping by" and taking her to the bank, and other places. When you press her, Jane acknowledges that she is afraid of Bud.

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You Should

1. Counsel Jane about calling 911
2. Call the abuse hotline
3. Call a relative of Jane's
4. Do nothing since this was a confidential conversation

Action	Percentage
Counsel Jane about calling	8%
Call the abuse hotline	62%
Call a relative of Jane's	23%
Do nothing since this was a confidential conversation	8%

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You should consider reporting if you:

1. Are an attorney
2. Are an attorney or CPA
3. Are a CPA or financial planner
4. Are a CPA, CFP or trust officer
5. Are any of the above professionals

Category	Percentage
Are an attorney	0%
Are an attorney or CPA	8%
Are a CPA or financial planner	6%
Are a CPA, CFP or trust officer	23%
Are any of the above professionals	63%

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Az. Stat. 46-454(b)

- Vulnerable adult
- Who's covered? Attorney, accountant, trustee, guardian, conservator, "or other person who has responsibility for" tax records or use or protection of adult's property
- While doing the "job"
- Reasonable belief
- Shall report

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Lawyer Confidentiality

- Az Rules Professional Conduct 1.6 requires client's informed consent or situation where rule authorizes disclosure.
- See 1.6(d)(5): other law requires disclosure, comment 14 to rule
- See ethics opinion 01-02 (may disclose to comply with statute)
<http://www.azbar.org/Ethics/EthicsOpinions/ViewEthicsOpinion?id=270>

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What About CPAs? CFPs?

- Statute covers you.
- Duties of confidentiality trumped.
- CPA, also Az. 32-749(a) confidentiality.
- AICPA Code of Professional Conduct
 - <http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/default.aspx>
- CFP-FPA Code of Ethics & Standards of Practice.
- Az. Fiduciary Licensing Program
 - <http://www.azcourts.gov/cld/FiduciaryLicensingProgram.aspx>

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And now for the stuff we didn't get to....

- That's all the further we got in the actual presentation. What follows are the questions we would have tortured you with if we'd had, say, three hours to work with.

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Client Identification

- Why Important.
- Duties that Flow.
- How Look at Client Identification.
- What Could Possibly Go Wrong?
- Ethical Considerations.
- Value of Engagement Letter
 - CPAs see asboastorage.blob.core.windows.net/documents/engagementletter.pdf
 - Lawyers, consider <http://www.actec.org/public/EngagementLettersPublic.asp>

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Jane Johns Has An Appointment

- You are an attorney. You have an appointment scheduled with a new client, Jane Johns.
- She wants to update her estate plan. She has sent daughter Mimi to the appointment. The daughter has the copy of Jane's prior estate plan and tells you that she has brought some notes with her from her mom and she will tell you what changes are to be made in the planning documents.

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Who Is Your Client?

1. Mimi
2. Jane
3. Both of them
4. Neither of them, until I decide

Option	Percentage
Mimi	25%
Jane	25%
Both of them	25%
Neither of them, until I decide	25%

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Can you talk to Mimi?

1. No-Jane is the one with the appointment.
2. Yes-Mimi is the client since she is there.
3. No-Jane has to sign the documents.
4. Yes if Mimi has a power of attorney.

Option	Percentage
No-Jane is the one with the appointment	25%
Yes-Mimi is the client since she is there	25%
No-Jane has to sign the documents	25%
Yes if Mimi has a power of attorney	25%

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What if Jane & Mimi both show up? Should you meet with them both?

1. No. Jane is your client & 3rd party presence causes problems.
2. Yes, if Jane consents.
3. No-you haven't decided whether to take the case.
4. Yes, if Mimi's presence is necessary.

Option	Percentage
No. Jane is your client...	25%
Yes, if Jane consents...	25%
No-you haven't decided...	25%
Yes, if Mimi's presence is necessary...	25%

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So What if Instead...

- Jane and her husband Walt come in for estate planning. You meet with them, get all the information, and prepare the documents. When they come back to sign the documents, Walt sends Jane back to the car to get the checkbook and while she's out tells you that although he is signing the documents today, he wants you to prepare an addendum to his estate plan to make a disposition to a child born outside of the marriage & unknown to Jane...and by the way, mum's the word....

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Who is Your Client?

1. Walt & Jane for estate planning only
2. Walt & Jane for estate planning & Walt for the amendment
3. Uh-oh

Option	Percentage
Walt & Jane for estate planning only	33%
Walt & Jane for estate planning & Walt for the amendment	33%
Uh-oh	33%

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Can You Do As Walt Asks?

1. Sure-you will have completed your representation of Jane
2. Nope-you owe a duty to both Walt & Jane, so you must tell Jane
3. You need to withdraw & don't let them sign the documents

Option	Percentage
Sure-you will have comp...	33%
Nope-you owe a duty to...	33%
You need to withdraw &...	33%

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Truthfulness

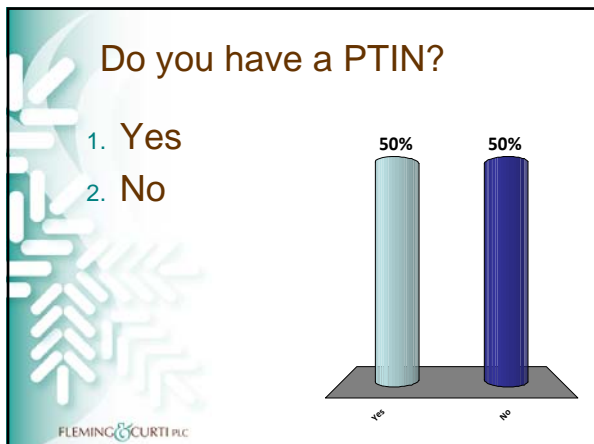
- As professionals, we have duties to
 - Clients
 - Courts
 - Others?

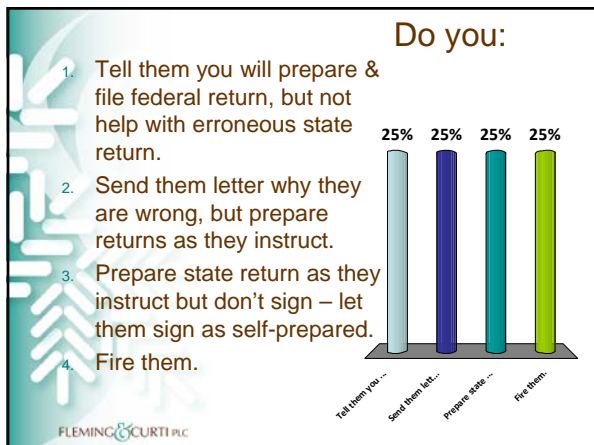
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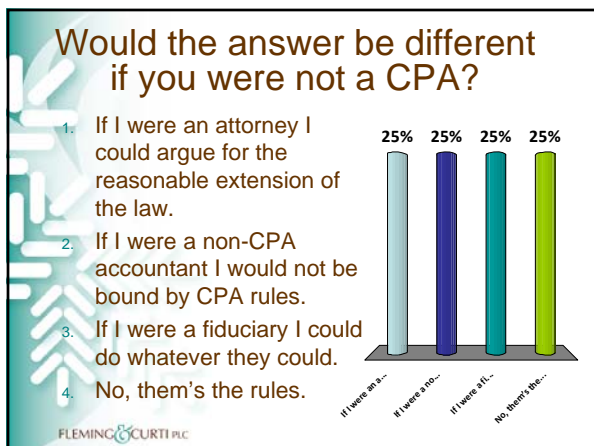
Randi & Kim

- You are a CPA.
- Your clients, Randi & Kim, married last year in California. They ask you to prepare their federal income tax return as "married filing jointly."
- They want you to file their Arizona state income tax return in the same way.
- You tell them that Arizona requires filing of a Schedule S, which treats them as two separate filers.
- They are adamant that they are married, and they will refuse to sign what they consider a false return.

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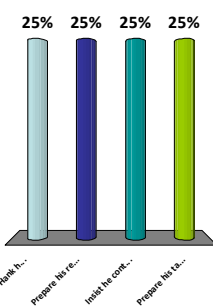
Hank

- You are Hank's tax preparer. Hank is a single man (or so you have always thought). In the course of preparing his 2013 federal return, he mentions that he "married" his then-partner in Canada in 2006, but that they separated in 2007.
- Under closer questioning he tells you that he and his partner never considered their marriage as really binding, since at the time there was little question that same-sex marriages were invalid in most of the U.S.

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As a Tax Preparer Do You?

- Caution Hank he might have problems & should talk to a domestic relations lawyer, but prepare return as single person.
- Prepare his return as a single person, but tell him you have no opinion on marital status because you aren't a lawyer.
- Insist he contact his spouse & prepare his return as married.
- Prepare his tax return as married (jointly or separately) and contact the spouse about amending prior years' returns.



Option	Percentage
Caution Hank he...	25%
Prepare his ret...	25%
Insist he con...	25%
Prepare his tax...	25%

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The Practice of Law

- What is it?
- What is UPL?
- Where is line drawn-see, e.g. Legal Document Preparers
 - <http://www.azcourts.gov/cld/LegalDocumentPreparers.aspx>
 - Az. Code Judicial Administration §§ 7-201, 208.
- Why care?
 - Protection of public
 - Education, oversight, licensing, CLE, discipline....

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The Practice of Law

- Az. Supreme Court Rule 31(a)(2):
 - A. "Practice of law" means providing legal advice or services to or for another by:
 - (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
 - (2) preparing or expressing legal opinions;
 - (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
 - (4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
 - (5) negotiating legal rights or responsibilities for a specific person or entity.

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Then What is UPL?

- Rule 31(a)(2)(B) "Unauthorized practice of law" includes but is not limited to:
 - (1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a); or
 - (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.
 - 31(a)(2)(D) 30 exemptions.

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Jimmy

- Jimmy gets some really nifty estate planning documents from the internet that were "customized" for him and "in compliance with" Arizona law. Jimmy wants you to review the documents, tell him if he completed them correctly and whether they will accomplish his goals.

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What Do You Tell Jimmy?

1. That you are an attorney and can review the documents.
2. That you are an attorney but do not review DYI documents.
3. That you are not an attorney and cannot answer his questions except to tell him if he filled in the blanks correctly.
4. That you are neither an attorney nor a legal document preparer and can't help him.
5. That you are not an attorney but can give him your quick opinion

Option	Percentage
That you are an attorney and can review the documents.	20%
That you are an attorney but do not review DYI documents.	20%
That you are not an attorney and cannot answer his questions except to tell him if he filled in the blanks correctly.	20%
That you are neither an attorney nor a legal document preparer and can't help him.	20%
That you are not an attorney but can give him your quick opinion	20%

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What Makes Someone Competent In Chosen Profession

1. Test (bar exam, certification, etc.).
2. Born with smarts
3. Years of Experience
4. Hard Work
5. All of the above....maybe

Option	Percentage
Test (bar exam, certification, etc.).	20%
Born with smarts	20%
Years of Experience	20%
Hard Work	20%
All of the above....maybe	20%

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Clients with Diminished Capacity

- (Lawyers) Ethics Rule 1.14; Ethics Op'n 01-02.
- FPA Practice Management Center: *Mental Incapacity: When Clients Need to Relinquish*
 - <http://www.fpanet.org/professionals/PracticeManagement/PracticeSolutionsMagazine/MarchApril08/WhenClientsNeedtoRelinquish/>
 - Also several articles involving financial planning and clients with dementia.

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Keep in Mind

- Capacity may be fluid or incremental rather than an “all or nothing” condition.
- Capacity may depend on the location, time, environment and other factors.
- Capacity may be transient.
- May depend on what actions the client needs to take.
- Things you can do to “improve” client’s understanding?

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“Normal” Client-Attorney Relationship

- 5 elements to a “normal” relationship:
 - client control or autonomy (Rule 1.2);
 - communication (Rule 1.4);
 - confidentiality (Rule 1.6);
 - loyalty (Rules 1.7 & 1.9) and
 - client capacity (Rule 1.14).

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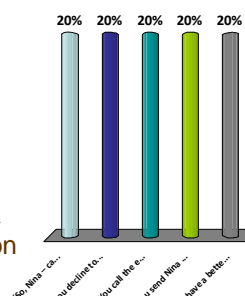
Nina

- Nina, 96, a prior client, comes in to ask you to review a contract for her where she will invest \$2 million in a new internet start up.
- Nina is worth \$97 million.
- When asked why, she says that she went to some lunch about investing strategies and was told this is a hot prospect and she needed to get in on the ground floor now.
- As she was driving up, you happened to notice that Nina’s car windows were all lined with aluminum foil, except for a small spot on the front and rear windshields.

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What Do You Do?

1. "So, Nina – can you name the current President?"
2. You decline to help Nina
3. You call the elder abuse hotline
4. You send Nina for a geri-psych evaluation
5. I have a better idea



Option	Percentage
"So, Nina – ca..."	20%
You decline to...	20%
You call the e...	20%
You send Nina ...	20%
I have a better...	20%

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STETSON LAW

Rebecca C. Morgan
Center for Excellence in Elder Law
LL.M. in Elder Law
www.law.stetson.edu/elderlaw

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