

January 14, 2013

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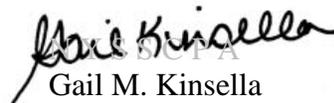
By e-mail: lsnyder@aicpa.org

**Re: Exposure Draft, Proposed Revised Interpretation, AICPA Professional Ethics Division,
Subordination of Judgment by a Member, issued November 16, 2012**

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 29,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned exposure draft.

The NYSSCPA's Professional Ethics Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with us, please contact Debbie A. Cutler, Chair of the Professional Ethics Committee at (212) 521-4340, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,


Gail M. Kinsella
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

**EXPOSURE DRAFT, PROPOSED REVISED INTERPRETATION, AICPA
PROFESSIONAL ETHICS DIVISION, SUBORDINATION OF JUDGMENT BY A
MEMBER, ISSUED NOVEMBER 16, 2012**

January 14, 2013

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New York State Society of Certified Public Accountants

Comments on

Exposure Draft, Proposed Revised Interpretation, AICPA Professional Ethics Division, Subordination of Judgment by a Member, issued November 16, 2012

The New York State Society of Certified Public Accountants appreciates the opportunity to provide comments on the Professional Ethics Executive Committee (PEEC) proposed revision to the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct (the Code).

The NYSSCPA generally concurs with the PEEC's proposal to revise Interpretation No. 102-4, *Subordination of Judgment by a Member*, thereby broadening its application to members in public practice. We request that the PEEC consider further defining the term, "subordination of judgment" to achieve consistency in its usage.

We request that the PEEC clarify whether the scope of the revised interpretation applies to the subordination of judgment between a member and his or her client, or is limited to the subordination of judgment of a member within his or her own organization. We request that the PEEC consider clarifying the applicability of this revised interpretation.

There are those among us who believe that the incorporation of the concept of threats and safeguards into the guidance might assist members in their assessment of compliance with Rule 102, *Integrity and Objectivity*, of the Code. If such threats and safeguards are incorporated into the revised interpretation, PEEC should consider specifically defining and explaining each threat and safeguard along with applicable guidance explaining how they are to be considered in the assessment process.

Below we have provided specific terminology that we suggest that the PEEC define and incorporate into the revised interpretation based upon existing definitions, along with our modifications, that appear in the AICPA *Guide for Complying with Rules 102-505* (the "Guide"), a non-authoritative publication. (We are aware that the AICPA restructured Code dated November 16, 2012 has defined the specific terminology listed below, and that the proposed definitions may at times differ from those in the Guide.¹ Not all members are familiar with the following terminology.)

Because the goal is to broaden the guidance in Interpretation 102-4, we suggest that the PEEC provide the defined terminology. Specifically, we recommend incorporating the following terminology at the beginning of the interpretation similar to the approach taken in Rule 501, Interpretation 501-1 as follows:

¹ The proposed terminology has been expanded to include members performing professional services on a volunteer basis by adding the words "other relevant third party" in the definition of familiarity threat and self-interest threat.

The following terms are defined below solely for use with this interpretation. [As noted above the definitions originated from the Guide. Modifications to the Guide definitions have been underlined.]

Terminology

Acceptable level. A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that compliance with the rules is not compromised.

Familiarity threat. The threat that because of a long or close relationship with a client, employer, or other relevant third party, a member will become too sympathetic to their interests or too accepting of their work.

Safeguards. Actions or other measures that eliminate threats or reduce them to an acceptable level.

Self-interest threat. The threat that a member will act in a manner that is adverse to the legitimate interests of his or her firm, employer, client, other relevant third party, or the public, as a result of the member or his or her immediate or close family member's financial interest in or other relationship with a client, the employer, or other relevant third party.

Threats. The risk that relationships or circumstances could compromise a member's compliance with the rules.

Undue influence threat. The threat that a member will subordinate his or her judgment to that of an individual associated with a client, employer, or other relevant third party because of the individual's (1) reputation or expertise, (2) aggressive or dominant personality, or (3) attempts to coerce or exercise excessive influence over the member.

We request that the PEEC consider providing further guidance with respect to the appropriate documentation and other steps to be taken when a member continues his or her relationship with an organization after the member has concluded that no safeguards can eliminate or reduce the threats to an acceptable level or if the appropriate action was not taken by the organization.

We recommend that the word "rules" be added to all references in the document that incorporates the term "applicable laws or regulations" (appearing on five separate occasions) as currently presented in the Guide when referring to "laws, rules and regulations."

The first sentence in the second paragraph of the text of the proposed revision document appears to be missing a word when we excluded the deletions. We suggest adding the word "then" before the word "self-interest." The paragraph without the stricken words and adding the word "then" would read as follows:

*If a member and his or her supervisor **or other person to whom subordination of judgment might occur (supervisor)** have a **difference of opinion** relating to the **application of accounting principles; auditing standards; or other relevant professional standards, including standards applicable to tax and consulting services, or applicable laws or regulations, then self-interest, familiarity, and undue influence threats to the member's compliance with the Integrity and Objectivity rule may exist. Accordingly, the member should apply appropriate safeguards so that the member does not subordinate his or her judgment when the member concludes that threats are significant.***

Guidance provided in the fourth and fifth paragraphs of the proposed revised interpretation regarding the member's conclusion is inconsistent. The fourth paragraph includes a reference to compliance with Professional Standards and the fifth paragraph does not. We believe that reference to Professional Standards should be addressed consistently. Its omission in paragraph five does not make sense. It appears that the difference between these two paragraphs is that the fourth paragraph applies only to compliance with Professional Standards when there is not a material misrepresentation of fact or violation with applicable laws or regulations. It seems to be PEEC's intent to exclude Professional Standards in the fifth paragraph. (See addendum document for our proposed recommendations.)

We agree with the PEEC that a member, in assessing the significance of any identified threats, should form a conclusion after appropriate research or consultation about whether the result of the position fails to comply with Professional Standards when applicable; creates a material misrepresentation of fact; or may violate applicable laws, rules or regulations. We are concerned that a member may conclude incorrectly that the position taken is not in compliance with Professional Standards or a violation of applicable laws, rules or regulations, when, in fact, the member's conclusion is **incorrect**. This incorrect conclusion might be caused by a lack of professional experience; lack of knowledge about the organization; limited access to an organization's policies and procedures; recent changes in applicable laws, rules or regulations, *etc.*

If a member reaching an incorrect conclusion were not satisfied with the discussion with his or her supervisor and his or her organization did not have internal policies and procedures for reporting differences of opinion that would provide appropriate guidance in the member's judgment, this may result in a member incorrectly discussing his or her concerns with higher level management within the organization, third parties, such as regulatory authorities or external accountant, and a potential resignation. To reduce a member's risk in forming an incorrect conclusion that is not satisfied by a discussion with the member's supervisor, we request that the PEEC provide additional guidance.

We recommend adding the words underlined to the last bullet in the safeguard guidance paragraph.

- ***Documenting his or her understanding of the facts, the substance of the issue (for example, the accounting principles, auditing standards, or other relevant professional standards involved or applicable laws, rules or regulations) and the conversations, dates, and parties with whom these matters were discussed and any decisions made concerning the issue(s).***

The proposed revision's last paragraph states, "A member should apply similar safeguards, as appropriate, to other situations involving a difference of opinion so that the member does not subordinate his or her judgment." It is not entirely apparent as to what this guidance may refer; so we request that the PEEC either consider deleting the language or providing additional explanation.

A consensus could not be reached on whether a transition period to adopt the revisions to Interpretation 102-4 is necessary. Some believe that a reasonable transition period should be given because some firms or organizations may need additional time to update their systems and policies in order to comply with the revised interpretation.

ADDENDUM:

This addendum has been provided that incorporates our comments, including minor modifications to wording not describe herein. The addendum document was created from the “Text of Proposed Revision” document that was part of the Exposure Draft, and excludes the deletions that PEEC identified as stricken.

(AICPA Additions appear in **boldface italic**, NYSSCPA Professional Ethics Committee in underline italics.)

Text of Proposed Revision

.05 102-4—Subordination of Judgment by a Member

The Integrity and Objectivity rule [ET section 102.01] prohibits a member from knowingly misrepresenting facts or subordinating his or her judgment when performing professional services **for a client, an employer, or on a volunteer basis**.

The following terms are defined below solely for use with this interpretation.

Terminology

Acceptable level. A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that compliance with the rules is not compromised.

Familiarity threat. The threat that because of a long or close relationship with a client, employer, or other relevant third party, a member will become too sympathetic to their interests or too accepting of their work.

Safeguards. Actions or other measures that eliminate threats or reduce them to an acceptable level.

Self-interest threat. The threat that a member will act in a manner that is adverse to the legitimate interests of his or her firm, employer, client, other relevant third party, or the public, as a result of the member or his or her immediate or close family member’s financial interest in or other relationship with a client, the employer, or other relevant third party.

Threats. The risk that relationships or circumstances could compromise a member’s compliance with the rules.

Undue influence threat. The threat that a member will subordinate his or her judgment to that of an individual associated with a client, employer, or other relevant third party because of the individual’s (1) reputation or expertise, (2) aggressive or dominant personality, or (3) attempts to coerce or exercise excessive influence over the member.

*If a member and his or her supervisor **or other person to whom subordination of judgment might occur (supervisor)** have a **difference of opinion** relating to the **application of accounting principles; auditing standards; or other relevant professional standards, including standards applicable to tax and consulting services, or applicable law, rules or regulations, then self-interest, familiarity, and***

undue influence threats to the member's compliance with the Integrity and Objectivity rule may exist. Accordingly, the member should apply appropriate safeguards so that the member does not subordinate his or her judgment when the member concludes that threats are significant.

In assessing the significance of any identified threats the member should form a conclusion, after appropriate research or consultation, about whether the supervisor's opinion ~~result of the position~~:

- a. fails to comply with professional standards, when applicable;*
- b. creates a material misrepresentation of fact; or*
- c. may violate applicable laws, rules or regulations.*

Threats would not be considered significant ~~If the member concludes that the position taken by the supervisor is not in compliance with professional standards but does not result in a material misrepresentation of fact or a violation of applicable laws, rules or regulations, threats would not be considered significant.~~ However, the member should discuss his or her conclusions with the person taking the position.

Threats would be considered significant ~~If the member concludes that the position taken by the supervisor is not in compliance with professional standards because it results in a material misrepresentation of fact or a violation of applicable laws, rules or regulations, threats would be considered significant.~~ In such circumstances, the member should discuss his or her concerns with the supervisor. If the difference of opinion is still not resolved, the member should discuss his or her concerns with the appropriate higher level(s) of management within the organization (for example, the supervisor's immediate superior, senior management, the audit committee or equivalent, the board of directors, or the company's owners).

If after discussing such concerns with the supervisor and appropriate higher level(s) of management within the organization, the member concludes that appropriate action was not taken, the member should consider, in no specific order, the following safeguards to ensure that threats to the member's compliance with the Integrity and Objectivity rule are eliminated or reduced to an acceptable level:

- Determining whether any additional requirements exist under his or her employer's internal policies and procedures for reporting differences of opinion.*
- Determining whether any responsibilities exist to communicate to third parties, such as regulatory authorities or the employer's (former employer's) external accountant. When dealing with the employer's external accountant, the member should at all times be cognizant of his or her obligation under Interpretation No. 102-3 [ET section 102.04].*
- Consulting with his or her legal counsel regarding his or her responsibilities.*
- Documenting his or her understanding of the facts, the substance of the issue (for example, the accounting principles, auditing standards, or other relevant professional standards involved or applicable laws, rules or regulations) and the conversations, dates, and parties with whom these matters were discussed and any decisions made concerning the issue(s).*

If the member concludes that no safeguards can eliminate or reduce the threats to an acceptable level or if the member concludes that appropriate action was not taken, he or she should consider his or her continuing relationship with the organization.

Nothing in this interpretation would preclude a member from resigning from the organization at any time. However, resignation may not relieve the member of his or her responsibilities in the situation, including any responsibility to disclose to third parties, such as regulatory authorities or the employer's (former employer's) external accountant.

A member should apply similar safeguards, as appropriate, to other situations involving a difference of opinion so that the member does not subordinate his or her judgment.