

# Responses to Requests for Client Information and Duties of Confidentiality of CPAs

By: *Timothy S. Noon, Esq.*

What do you do when you receive a civil subpoena for your records from a client's litigious business partner, your client's spouse's attorney in divorce litigation, or a grand jury subpoena from a U.S. Attorney in confidential criminal proceedings for audit records of a client under scrutiny?

The American Institute of Certified Public Accountants' professional standards have long recognized that a member CPA "shall not disclose any confidential client information without the specific consent of the client." (Rule 301) The main exceptions to that rule occur when the CPA is responding to a "validly issued and enforceable subpoena or summons," or complying "with applicable laws and government regulations" in response to an official inquiry from a federal or state government regulatory agency.

The IRC is even more specific in prohibiting disclosure. IRC Section 7216 makes it a misdemeanor for any tax return preparer to release any tax information obtained or generated in the engagement, unless the preparer has express client consent, or a court order has been issued.

CPAs are often justifiably confused about what rules apply when trying to determine whether appropriate taxpayer consent has been given, or whether they have been served with valid legal process. States have different laws/rules, and there are a myriad of federal and state statutes, regulations, and ethical rules to navigate. The key is to remember that the records (other than your work papers) belong to *your client*, not you.

What are some of the pitfalls?

- *Responding to a subpoena without informing your client, because you believe it is a valid subpoena.*

Whether or not it is a valid subpoena can be subject to interpretation. Your client must be put on notice promptly to give your client the opportunity to challenge the subpoena, even if it appears facially valid or "legal."

- *In response to a federal grand jury subpoena, sending an audit manager to testify about the engagement and interpretations when the subpoena only calls for the production of records only.*

A grand jury subpoena is a method for a federal grand jury to gather evidence in a criminal matter sufficient to consider indictment. Because of your duties and the gravity of grand jury investigations, you should never volunteer documents before the due date stated on the subpoena, or agree to an "informal" interview without first conferring with your counsel. In addition, a records only subpoena does not require testimony. Typically, a declaration or

affidavit signed by a qualifying staff member with knowledge of your record retention and production practices will suffice. If you send an audit manager to volunteer information and opinions about what and when your client knew certain information or failed to follow your advice, your firm will have inappropriately volunteered confidential information.

- *In state matters, producing your work papers such that your audit or tax work can be readily reviewed and critiqued by forensic litigation experts can lead to your firm being added as a party to the litigation.*

There are ethical guidelines, state statutes and regulations regarding your work papers. Those records belong to the accountancy firm, and are not subject to production absent a court order. Your work papers constitute your records (*except for records produced by your client*), including items such as the CPA's records of the procedures applied, tests performed, audits, analyses, memoranda, schedules or commentaries prepared by the CPA.

Contact counsel or your carrier representative before you improperly volunteer information. CPA Mutual Insurance Company has provisions for funding limited assistance for legal advice to guide you through the process to avoid the pitfalls.

---

Timothy S. Noon, Esq. of Noon & Associates, is a Southern California professional liability litigation practitioner who regularly counsels and defends accountancy firms in malpractice and fiduciary duty matters.