

When a Client Breakup Goes Bad

Three lessons from a recent Virginia Board of Accountancy disciplinary ruling serve as a cautionary tale.

By Robert H. Cox

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Imagine that you are in the middle of tax season, short on sleep and long on stress. You are behind on some returns, so several clients call asking when their returns will be ready. Perhaps one or more of these clients ask for the return of their records because they want to engage another accountant. How would you deal with this situation? Hopefully, you would not react as one certified professional accountant (CPA) recently did.

Multiple clients of a CPA complained to the Virginia Board of Accountancy (VBOA) regarding the CPA's failure to meet deadlines, failure to return client records after termination, use of abusive and threatening language, and sharing of the confidential information of one client with another. The conduct arose from the CPA's loss of composure during a stressful period when he was short on sleep and dealing with personal issues.

However, these factors did not mitigate his violations in the eyes of the VBOA. The VBOA's 2018 disciplinary order offers a cautionary tale for CPAs. In the order, the VBOA sanctioned the respondent (the CPA charged in the disciplinary proceeding) for multiple violations of the Code of Virginia and the American Institute of CPAs (AICPA) Code of Professional Conduct (AICPA Code) related to the return of client records, disclosure of confidential information, inappropriate communications, failure to respond to a VBOA investigation, and continuing professional education (CPE) compliance. The VBOA revoked the respondent's license, prohibited him from using the CPA title in Virginia, and imposed a total monetary penalty of \$51,850.

The banner features the Western Alliance Bank logo on the left, which includes the letters 'WA' in a stylized font. To the right of the logo, the text reads 'Western Alliance Bank' and 'Member FDIC'. The background of the banner shows a black and white photograph of three business professionals in an office setting. Overlaid on the right side of the banner is the text 'Supporting all phases of the settlement process from ESCROW through DISTRIBUTION.' and a 'LEARN MORE' button.

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The Complaints

Over a two-month period in 2017, the VBOA received five complaints from the respondent's clients. The complaints alleged that the respondent had failed to exercise due professional care, failed to return client records upon request, failed to perform the work for which he was engaged, disclosed confidential client information without client consent, and engaged in inappropriate communications. The clients each eventually terminated the respondent and requested return of their records. The respondent either did not return the records or returned only a portion of them. When the clients complained about this, the respondent responded in a vulgar, threatening, or abusive manner. Below is a summary of the VBOA complaints submitted.

Client A. Client A had been the respondent's client for 10 years. In the spring of 2017, he became concerned about the relationship following the respondent's discussion of sensitive business and personal information about another client (Client B), who was a friend of Client A. In addition, Client A discovered that the respondent had not updated Client A's business books for three months and had not sent 1099s to Client A's contractor. When Client A complained, the respondent texted that he should find another CPA. Client A requested a final invoice and return of his records. After the respondent failed to return the records, Client A followed up with subsequent emails, which were answered by the respondent with vulgar religious references, insults, and veiled threats.

Client B. In 2017, Client B decided to replace the respondent with a new accountant. Both Client B and his new accountant contacted the respondent to request the return of Client B's records; the respondent failed to return them. When Client B complained, the respondent sent him several text messages that contained insults and profanity, as well as a threat to contact the sheriff if he received any further communications. Thereafter, Client B learned that the respondent had not filed his 2013 business tax returns. Through discussions with the respondent's other clients, Client B also discovered that the respondent had disclosed his confidential business and personal information.

Clients C and D. Clients C and D are a married couple who had been the respondent's clients for several years. After delivering their records to the respondent in mid-February 2017, they called the respondent to see when their returns would be ready. The respondent told them that he was still working on the returns. On April 18, the respondent informed Clients C and D that, due to personal issues, he had not completed the returns but had filed an extension. Over the next three weeks, Clients C and D went to the respondent's office several times and

were told that the respondent either was not in or was still working on the returns. On May 10, 2017, the clients engaged a new accounting firm. The new firm contacted the respondent and requested the clients' records. In response, the respondent said that he was busy, told the accounting firm and Clients C and D to never contact him again, and threatened to call the sheriff to have them arrested.

Client E. After the respondent told Client E to find another tax preparer and demanded that he never step foot on his property again, Client E went to the sheriff, who contacted the respondent and requested the return of the client's records. In response, the respondent sent four separate text messages to Client E containing threats, insults, religious references, and requests not to enter the respondent's property. Client E had given the respondent originals of his records, which were not returned.

Clients F and G. Clients F and G are a mother and daughter who had arranged to meet the respondent on April 16, 2017, to pick up their completed returns. The respondent did not show for the meeting, so Client F called the respondent. The respondent claimed that he had just gotten out of church and asked to reschedule. When Client F said she believed that the respondent had failed in his fiduciary responsibility, he swore at her and hung up the phone. Her daughter, Client G, immediately called back. The respondent screamed at her, too, but eventually agreed to meet the next day. Before the rescheduled meeting, the respondent had another client inform Clients F and G that they needed to sign paperwork before he would release their returns. When Client F called for an explanation, the respondent went into a profanity-filled rant and hung up the phone. Then Client F sent an email, to which the respondent replied with a mix of insults; ultimately, though, he said that he would provide the returns by week's end. When the respondent did not provide the returns, Clients F and G hired an attorney, who sent the respondent a letter on May 4, 2017. The respondent replied on May 8, 2017, that he would mail the returns. In June 2017, Clients F and G finally received their returns, but Client G's return was incorrect. The clients hired another accountant to prepare their returns.

VBOA Informal Fact-Finding Conference

The respondent failed to respond to the VBOA's May 12, 2017, notice of apparent violation and failed to submit any CPE certificates of completion. On October 13, 2017, the respondent appeared for a VBOA informal fact-finding (IFF) conference.

In his testimony, the respondent admitted that he had never thoroughly read IRS Circular 230. He testified that he did not read the annual certification for CPE compliance on his renewal applications but signed the certification despite not knowing if he had met CPE requirements.

The respondent, attributing his behavior to sleep deprivation and personal issues, also admitted to some of the conduct alleged in the complaints. He admitted to discussing Client B's confidential information with Client A and said that he understood now that he was not to share confidential information without permission. He admitted to the "general connotation" of his words recounted by Clients F and G. He also admitted that he should not have used profanity and should have behaved more professionally. He agreed that he should have provided clients with disengagement letters and returned their records instead of resorting to texts and emails. The respondent admitted that he returned client records after April but said that he believed that he returned all records.

VBOA Findings

CPAs are held to high standards of integrity, objectivity, and independence. Under Virginia's accounting statutes, the VBOA regulates CPAs in Virginia. The VBOA holds CPAs to these high standards by enforcing the applicable statutes and regulations and the AICPA Code in its disciplinary orders. Following the IFF conference in this case, the VBOA issued a 64-page final opinion and order, the highlights of which are detailed below.

Failure to return client records. The AICPA Code and IRS Circular 230 § 10.28 require a CPA to promptly return client records when requested. AICPA Code ET § 1.400.200 requires the CPA to return the client's records no later than 45 days after a request is made. The respondent's failures to return his clients' records were deemed violations of the Virginia accountancy statutes and the AICPA code because the respondent failed to exercise professional moral judgment in all activities; failed to act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism; and committed an act discrediting the profession.

Disclosure of confidential client information. AICPA Code ET § 1.700.001.01 states that "[a] member in public practice shall not disclose any client confidential information without the specific consent of the client." The VBOA found that the respondent's disclosure of Client B's confidential information violated the Virginia accountancy statutes and the AICPA Code because he failed to perform all professional responsibilities with the highest sense of integrity, failed to maintain

objectivity and freedom from conflicts of interest, and failed to avoid knowingly misrepresenting facts.

Communicating in an inappropriate manner. The VBOA found that the respondent's inappropriate, vulgar, threatening, and abusive communications violated the Virginia accountancy statutes and the AICPA Code.

CPE violations. The VBOA found that the respondent falsely certified that he had complied with the board's CPE requirements on his 2015, 2016, and 2017 individual CPA license-renewal applications. In addition, the respondent failed to complete the annual ethics course or obtain the minimum required hours of CPE.

Failure to respond to a VBOA request. The VBOA found that the respondent failed to respond to its request for information related to possible violations.

Sanctions. In response to the respondent's violations, the VBOA

- 1 revoked the respondent's individual CPA license,
- 2 directed the respondent not to use the *CPA* title in Virginia and to immediately remove all signage displaying the *CPA* title,
- 3 imposed a \$10,000 fine for failing to return all client records when requested,
- 4 imposed a \$15,000 fine for disclosing confidential client information,
- 5 imposed a \$25,000 fine for committing acts discreditable to the profession,
- 6 imposed a \$1,000 fine for the deficiency of 120 hours of CPE,
- 7 imposed a \$250 fine for the failure to obtain 20 hours of CPE,
- 8 imposed a \$250 fine for the failure to complete the ethics course,
- 9 imposed a \$250 fine for the false certifications on the license-renewal applications, and
- 10 imposed a \$100 fine for the failure to respond to a VBOA request for information.

The total monetary penalty of \$51,850 was due within 90 days of the date of the order.

Conclusion

This VBOA decision is the most comprehensive order issued by the board in the last five years.

The order reminds CPAs that

- 1 a CPA has a duty to not disclose any confidential client information without the client's specific consent;
- 2 a CPA should promptly return client records in the CPA's custody or control when requested; and
- 3 a CPA must exercise sensitive professional judgment in all activities, act in a way that serves the public interest and honors the public trust and demonstrates commitment to professionalism, and not commit an act discreditable to the profession.

CPAs should be particularly professional in email and text message communications with clients. No matter how private you believe your emails and texts may be, they are discoverable and usable in a client dispute. "Informal" emails and texts are regularly presented as embarrassing, prejudicial evidence in government investigations, disciplinary proceedings, and civil litigation. In communicating with clients, you should expect that all communications may become public, so act accordingly. Never put anything in an email that you would not want to see on the front page of a newspaper. Never mix business with personal communications, and never include any client confidential information in a communication with another client or third party.

The order provides guidance as to not only what constitutes inappropriate professional conduct by a CPA but also the potential sanctions for different violations. While the conduct at issue here is extreme, it is easy to see how less aggravating behavior could run afoul of the same ethical requirements.

CPAs are held to high standards of professional conduct. Meeting these standards is not merely a goal for CPAs—it is a requirement that must be met throughout all aspects of a CPA's professional services.

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