



TEST YOUR RISK MANAGEMENT IQ

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FACT OR MYTH

Test Your Risk Management IQ

FACT

MYTH

1

Following professional standards alone is enough to defeat a claim.

2

Complying with requests from banks and other lenders for assurances regarding clients' financial strength could put CPAs and their licenses at significant risk.

3

One way to help protect your firm against hacking or cyber-attacks is to implement the "least privilege" concept of user permissions.

4

Client consent must be obtained before complying with all subpoenas.

5

If you communicate with the client regarding your billing and collection policies, and include the policies and stop-work and/or disengagement provisions in your engagement letter, you will avoid fee collection problems.

6

Representing both sides in a divorce can present potential conflicts of interest for a CPA.

7

If an email requesting a wire fund transfer looks legitimate and trustworthy, and it appears to be from someone you know, such as a long-term client of the firm, it's ok to confirm the request via email.

8

Jury research shows that the public, including clients, perceive that the CPA's fundamental job is to "advise and warn"

9

If you have remote employees, it is beneficial to have a Remote Workers Policy that addresses expectations of a remote worker

10

Regardless of whether or not you're truly satisfied with your carrier or policy, switching your Professional Liability insurance to a new carrier could cause your firm to lose its 'prior acts coverage' so you should stay put.

Following professional standards alone is enough to defeat a claim.

MYTH!

Juries (members of the public) decide questions of fact and assess situations with the benefit of hindsight. Jurors rarely care as much about CPA professional standards as they do about CPAs getting it right, which often means advising and warning clients of all significant matters. If something looks irregular, it probably is — investigate it, document it, communicate it, and get it right. Professional standards for CPAs are merely the floor — juries hold CPAs to even higher standards, what we refer to as jury or claims standards.

With our more than 35 years of malpractice claims experience, CAMICO has developed a wealth of information about what causes disputes between CPAs and their clients, what leads to litigation, and how to avoid or minimize the damages from such conflicts.

The following four pitfalls are especially prone to litigation but can be avoided when risk management principles and techniques are applied effectively:

Suing your client for fees: This almost always results in a cross complaint for malpractice. A good practice before going this route is to consult with your attorney or risk adviser for advice and guidance.

Advising both parties to a dispute or a transaction: Disputes between owners, spouses, or partners often result in advice that is perceived by one or more of them as favoring one party to the detriment of another and can lead to a malpractice claim. Make sure to watch for conflicts of interest.

Participating in business deals with clients: Investing in business deals with clients is often a mistake, especially when the CPA also provides professional services to the business. When the deal has a severe downturn, the CPA is portrayed as the financial expert who sacrificed the best interests of his client to benefit himself.

Failing to communicate in writing: Failing to document client communication can come back to haunt you should a lawsuit arise. If it is not in writing, it may be presumed later in a court of law that it didn't happen. Use engagement letters to set clear expectations and scope of services and follow up significant client meetings and calls with a **written memorialization** of who participated, what was discussed, action items agreed upon, and who was responsible for each.



Complying with requests from banks and other lenders for assurances regarding clients' financial strength could put CPAs and their licenses at significant risk.

FACT!



CPAs at times come under fire from banks and other lenders pressuring them to provide assurances regarding their clients' financial strength. Tempting as it may be for CPAs to comply with such requests, providing the requested assurances could put CPAs and their licenses at significant risk.

First, CPAs may face the risk of falling below professional standards if they don't adhere to AICPA Professional Standards. Interpretation No. 1, "Responding to Requests for Reports on Matters Relating to Solvency," of AT-C Section

105, *Statements on Standards for Attestation Engagements* (AICPA Professional Standards, AT-C §9105, ¶¶.01-.11), prohibits CPAs from providing any level of assurance that an entity is, or will continue to be, solvent.

Another risk is that lenders may allege that CPAs misrepresented their clients' creditworthiness should their clients later default on the loans. In some claim situations, lenders have alleged that CPAs were negligent and misrepresented their clients' self-employment status, financial condition, or creditworthiness.

Use Professional Judgment

The creditworthiness dilemma is a balancing act—CPAs need to carefully evaluate the risks associated with complying with these requests. For example, since professional standards do not require CPAs to provide any letters to third parties, what are the risks of saying “no” (e.g., losing the client, being sued by the client should the loan fall through) versus the risks of saying “yes” (e.g., not meeting the profession’s standard of care, becoming a “deep pocket” target for the lending institution if the client later defaults).

Tips When Responding to Third-Party Requests

Before tailoring your response letters, please remember the following:

- Be sure to obtain your client’s written consent before disclosing tax return information.
- Your letter should be simple and clear.
- Document only facts and the services you performed. Refrain from speculating on future events (e.g., forecast future income or

contingencies) and avoid making conclusions not supported by the services performed for the client (i.e., do not make assurances regarding the accuracy or completeness of the information provided unless the scope of your services enables you to provide such assurances).

- DO NOT provide any form of assurance regarding matters of solvency.
- Avoid using words that expand, rather than narrow, your responsibilities.

Tips for Educating Your Clients

- Have a conversation with your client regarding the scope and limits of the services you performed.
- Clarify for the client what you can and cannot provide under the scope and limits of the services rendered.
- Explain that professional standards prohibit you from providing assurance regarding the client’s financial position when the requisite scope of services hasn’t been performed.
- State that professional standards for CPAs prohibit CPAs from offering any form of assurance regarding matters of solvency.

One way to help protect your firm against hacking or cyber-attacks is to implement the “least privilege” concept of user permissions.

FACT!

Strictly define user permissions and restrictions so that users don’t have any more rights or access to a program or system than they need, also known as the “least privilege” concept. The same applies to administrators, who should not stay logged in as an administrator any longer than is strictly necessary. Excessive rights and activities can allow malware to do extra harm and lead to large losses of data.

For more cyber tips check out the below:



Educate, train and remind staff members frequently about good cyber-hygiene and avoiding phishing attempts. Avoid clicking on links and attachments, and make a phone call to verify any significant email requests.



Back up all important data and information frequently to reduce the likelihood that critical data is lost in the event of a cyber-attack or physical incident such as a fire or flood. Protect the backups in a remote or external location. Periodically verify whether the backup is working.



Use multi-factor authentication. This can add an extra level of security to help prevent an account hack, especially when employees work remotely.



Install a secure client web portal that will archive and store your clients’ personal documents and data. A portal will lower your staff’s administrative burden, ease the burden of locating important electronic documents, and eliminate the need to hunt for those documents within extended email threads.



Have cyber insurance that includes breach response services to help determine whether an incident is a breach, arrange for notifications and credit monitoring, respond to ransomware demands, and minimize losses.



Avoid public wi-fi or hotspots when inputting or working with personally identifiable information. Cyber-criminals can easily see individuals’ information on public wi-fi. Wait until you’re on a trusted network.



Client consent must be obtained before complying with all subpoenas.

MYTH!



Client consent must be obtained before complying with most subpoenas. In these cases, rules and regulations prohibit the accountant from complying with the subpoena unless the accountant has undertaken specific measures to protect client confidentiality, including obtaining the client's consent. However, government subpoenas, and those signed by a judge, generally require compliance, even without client consent. CPAs should always contact their professional liability risk adviser or attorney before responding to a subpoena.

6 THINGS TO DO IF YOU RECEIVE A SUBPOENA

A subpoena is usually a formal request for documents and/or appearance, typically requested by an attorney in the course of litigation, or by a government agency in the course of a criminal or civil investigation. Regardless of how much or how little information a CPA may have pertaining to the client or former client, it is always important to promptly report the matter. CPA firms are often uncertain about whether or how to respond to a subpoena, as they also need to comply with a number of rules and regulations that are intended to protect client confidentiality.

Assess Underlying Reasons

What is the underlying litigation about and does the CPA have direct or other knowledge about what the issues are? Is the CPA named correctly?

Understand the Request

What is the subpoena asking the CPA to do? Is it requesting to provide testimonies,

documents, or both? Does the subpoena excuse the CPA from testifying if documents are provided in advance?

Check for Information

Is the CPA in possession of the information listed? If the information is confidential, such as tax documents, it may be subject to claims of privilege.

Identify the Deadline

Does the subpoena provide a deadline for complying? If the deadline is quickly approaching, has the CPA received any notices about extension of time from the opposing party?

Recall Contact with Client

Has the CPA had any contact with the client, the attorneys on the case, or the governmental agency? Is the client taking specific measures to formally object to the subpoena?

Consult Risk Adviser / Attorney

Before responding to any subpoena, CPAs should always contact their risk adviser or attorney to evaluate the underlying litigation and the obligation to comply.

If you communicate with the client regarding your billing and collection policies, and include the policies and stop-work and/or disengagement provisions in your engagement letter, you will avoid fee collection problems.

MYTH!

The first step in avoiding collection problems is to communicate with the client regarding your billing and collection policies, and to include the policies and stop-work and/or disengagement provisions in your engagement letter. However, such provisions must then be enforced if the client doesn't pay you in accordance with the engagement letter. Otherwise, you may still end up completing too much work without receiving payment from the client. A stop-work clause in the fees section of your engagement letter enables your firm to stop work in the event the client fails to pay in a timely manner. Stop-work clauses must be enforced in order to be effective.

BILLING AND COLLECTION TIPS

Bills that are standardized, clear, concise and descriptive are more likely to be paid sooner. If the bill or its description of services is unclear, clients will be inclined to put it aside and to call about it later, lengthening the time it takes to pay the bill.



Communicate frequently with the client, and speak to the person in charge of authorizing the bill payment when it's due. If it's a large balance due, call 10 days before the due date to be sure the invoice has been received.

Retainers/Deposits: Use retainers/retainer replenishment for clients that are new to the firm, slow-paying, or financially stressed. Remind clients that retainers are not an estimate of the total cost, do not earn interest and are comingled with other funds, and must be paid before any work begins.



Stop-Work/Disengagement Clauses: CAMICO encourages the use of a stop-work/disengagement provision which can be enforced if a client doesn't pay in accordance with the terms of the engagement letter. The clause stipulates that if the client does not pay the firm, the firm can stop services without incurring any liability to the client for doing so. The enforcement of this clause significantly reduces the risk that your firm feels compelled to continue incur ever growing fees when the client has yet to pay for prior services.

Alternative Dispute Resolution: When used appropriately, mediation and arbitration can significantly reduce the cost and the emotional roller-coaster ride of disputes. CAMICO recommends adding clauses to engagement letters calling for mediation to resolve all disputes, and then binding arbitration for fee disputes not resolved during the mediation.



Representing both sides in a divorce can present potential conflicts of interest for a CPA.

FACT!

Divorce situations require the CPA to treat each spouse equally, regardless of who has more marital assets or who pays their fees. Although, representing both parties in a divorce isn't prohibited, but it is rarely advisable. If you do represent both sides in a divorce, you're exposing yourself to risk in the future. Even if you disclose your potential conflict of interest to both clients, and get them to waive the potential conflict, you are still exposed to risk. If one of the divorcing parties is unhappy with the results of their settlement, they might file suit against you.

LOSS PREVENTION TIPS

- **Be clear about your role in the process:** Splitting up household assets in divorce is often difficult and contentious. As a result, both divorcing parties can perceive their accountant to favor the other side. That's why you should be clear about your role in the process. This can be difficult, especially with long-time clients or clients whom you know socially. It's extremely important to keep your professional relationships separate from your personal relationships during the normal course of business.
- **If possible, ask both clients to formally sign a conflict-of-interest consent.** Attorneys often push clients to pursue third parties, and thus larger settlements, in divorce or divorce-related litigation. A consent may help protect you from that sort of legal action. Also make sure that your communications with clients are documented. Documentation can help protect you from future legal action.
- **Avoid performing a business valuation:** If a divorcing couple jointly owns a business, they may require a business valuation for their divorce proceedings. If you represented one or both of the divorcing parties before they split, it's best not to perform a business valuation — doing so can expose you to risk. Either spouse might dispute the valuation during the divorce proceedings or during subsequent litigation. The valuator might be accused of favoring one side over another.
- **CAMICO strongly recommends that you seek advice from your risk advisor or legal counsel before taking action.** CAMICO has handled lawsuits of all sorts filed by one aggrieved party to a divorce. Those parties generally alleged that a CPA favored one party over the other when preparing tax returns or performing other services. A lawsuit based on such allegations can be harmful to your reputation, and any civil suit is expensive to the defendant.



If an email requesting a wire fund transfer looks legitimate and trustworthy, and it appears to be from someone you know, such as a long-term client of the firm, it's ok to confirm the request via email.

MYTH!

If the firm's protocol with clients is to permit requests for wire transfers to be made via email, then establish and follow procedures to confirm requests using a mechanism other than email and proceed with the transfer only after confirming with the client (ideally by phone or in person) that the request is legitimate. This includes, but is not limited to, confirming the dollar amounts, the name of the financial institution, and the bank account number. To validate the authenticity of the request, confirm information only known to the client (ask questions to which hackers would not know the answers).

CPAs continue to be at high risk of social engineering attempts due to the type of information firms gather and store. Fraudulent wire transfers frequently cause large dollar losses. If the fraudster controls the client's and the firm's email, commonly referred to as a "man in the middle" attack, and the fraudulent request mimics previous legitimate requests, it is very difficult for the firm to identify the request as illegitimate. When the fraud is discovered after the transfer, the funds are usually not recoverable. Domestic banks are often not helpful in preventing fraudulent transfers, as laws tend to limit their risk exposure and enable them to deny responsibility.

Practical loss prevention tips to minimize fraudulent wire transfer exposure:

- **Use your professional skepticism** to avoid being lulled into a false sense of security. A fraudulent email request may resemble prior legitimate requests, but a new bank account receiving the funds is often a red flag, especially if the new account is in another country.



- **Slow down.** Whether working in the office or remotely, take the time necessary to validate suspicious or unexpected email. Do not click a link, pop-up, or attachment without first hovering your cursor over the link to display the URL to assess its legitimacy.
- **Establish written protocols.** The firm should establish written protocols with clients for handling client funds, especially as it relates to handling wire transfer requests. Consider establishing dollar thresholds above which verbal consent would be required if clients do not want to be "bothered" to approve each request. In addition, document who the authorized client representative(s) would be for providing such consent if/when the client is not available.
- **Proceed with caution.** With the increased number of claims related to fraudulent wire transfers, best practice in the absence of any written protocols to the contrary would be to verbally confirm **ALL** wire transfer requests with these clients to minimize risk.
- **Strongly consider incorporating a limitation of liability clause into your engagement letters when handling client funds.** This language will better align the risk associated with these types of engagements with your reward (fees). This language should be **clear and conspicuous**, to articulate that the client is making an informed decision in accepting such terms.

Jury research shows that the public, including clients, perceive that the CPA's fundamental job is to "advise and warn"

FACT!



Economic conditions have long had a significant impact on CPA professional liability claims. Now more than ever, CPAs need to be prepared and vigilant to minimize the potential of additional liability exposures.

Jury research shows that the public, including clients, perceive that the CPA's fundamental job is to "advise and warn" — to advise clients of opportunities and to warn them about risks. Juries believe the CPA's "advising and warning" antennae should be hyper-sensitive during economic downturns. Some even believe "anyone can do a CPA's job when times are good, but during difficult times — that's when

the CPA really needs to bear down." In other words, expectations are elevated when economic times are challenging.

For example, when something goes wrong with a business during difficult economic times, behaviors begin to change, sometimes to the point where clients will perceive the CPA as having failed to advise and warn. Clients may deflect blame and rationalize, "What occurred isn't necessarily my fault ... Is it possible someone else allowed this to happen? ... Maybe I can blame someone else, and possibly recover our loss ... Yeah, I think it was their fault."

Also, looking at events in hindsight means history can be rewritten to benefit the client: “Why didn’t my CPA warn me about what was going to happen? I was relying on my CPA’s expertise for financial help.”

When economic times are challenging, professional skepticism must increase, not just to protect yourself and your client, but to protect other key stakeholders (e.g., the readers of the financial statements, lenders). History has proven that desperate times will cause some clients to take desperate measures, leading to deceit.

Do ***not*** carry the burden of your client’s problems and permit yourself to become a victim for your clients. Loyalty to a client doesn’t take precedence over maintaining your professional standards of integrity, independence and objectivity. It is not worth jeopardizing your reputation or your own financial security in an attempt to mitigate or minimize client dilemmas.

PRACTICAL LOSS PREVENTION TIPS TO MINIMIZE EXPOSURE TO FRAUD-RELATED CLAIMS INCLUDE:



Periodically warn clients of embezzlement risk.



Encourage clients to require vacations as well as job and task rotation (fraudsters can’t take the chance that the evidence of their fraud will surface on someone else’s watch).



Offer clients additional services, such as:

- Internal control assistance.
- Two-tiered bank reconciliation services, one that performs additional procedures which might detect fraudulent transactions, and another that does not.



Encourage clients to perform fraud risk assessments (and consider serving as the discussion leader).



Suggest clients establish fraud/ethics hotlines.



Recognize potential independence and objectivity impairment; ask yourself whether you can be objective when evaluating potential fraud that you did not discover when performing your previous services, and then document that assessment.



Retain contemporaneous defensive documentation for having performed or suggested each of the above steps.

If you have remote employees, it is beneficial to have a Remote Workers Policy that addresses expectations of a remote worker.

FACT!

Employee and candidate demands for a flexible schedule and/or remote working environment are pushing accounting firms outside of their comfort zone as they try to remain competitive. Firms that have not in the past considered allowing employees to work in a remote environment, citing security and control reasons, are now finding themselves with a limited local candidate pool and the threat of an employee exodus in search of a more flexible work environment.

Of course, a remote workforce can bring greater risk to the firm. As firms consider the various factors to support a remote workforce, there are a few items to keep in mind.

- **Consider conducting background checks** on candidates who rise to the top of the list and are offered a position.
- **Contact the candidate's references** and ask about work habits, strengths and weaknesses. Many past employers will shy away from providing such detail, but it doesn't hurt to ask.
- **Review and update policies** that impact a remote work group such as cyber safety, use of firm resources, and care of client files.
- **Create a checklist** for an employee's home office to ensure cyber safety and address issues such as a firewall, secured network, remote swipe, and firm-provided phone.

Once remote employees are onboard, firms must ensure that processes are keeping employees engaged, heard, and feeling valued. Create opportunities for engagement and have a solid Remote Workers Policy that addresses expectations of a remote worker. Such a policy may address:

- **Employees should be available and engaged** during regular business hours.
- While the employee's remote office need not be a dedicated room or office space necessarily, the **space should be free from distractions**, pets, and young children, and allow for a secure space where firm and client information cannot be accessed by others, and phone calls are private.
- **Express expectations related to meetings** on Zoom, Teams and other virtual meeting platforms. Address issues such as requiring the employee to have their camera on or allowing them to keep the camera off, dress code while on virtual meetings, and backgrounds.
- The accounting firm of the future is here. With the advice of a risk management advisor, firms can **gain an understanding of potential risk and create best practices to support the new workplace of today.**



Regardless of whether or not you're truly satisfied with your carrier or policy, switching your Professional Liability insurance to a new carrier could cause your firm to lose its 'prior acts coverage' so you should stay put.

MYTH!

This is one of the more common misconceptions heard by CAMICO Account Executives when speaking with CPA firms considering a switch from their current professional liability insurance carrier. If you are ever feeling that there must be better options, you should feel empowered to explore and consider switching programs.

The key is to apply with other programs before your current insurance expires, so you do not experience a coverage interruption. Most insurance applications include a question about existing coverage and how far it goes back for prior acts – which is determined by your 'Retroactive Date' (aka, 'Prior Acts Date').

This lets the Underwriter know that there is prior acts coverage to include with any insurance proposal. You should be wary of any new coverage proposal with a Retroactive Date that does not match your current coverage.

See next page for bonus tip





Looking for CPA-focused insurance and risk management solutions?

Give CAMICO a call!

The accounting profession is constantly evolving, and clients today hold CPAs to even higher standards and expectations. Just as your firm provides the best service, advice and solutions for your clients and community, so does CAMICO by providing CPA-focused risk management advice and guidance from in-house Loss Prevention specialists and experts.

Protecting CPAs for more than three decades means that we put our policyholder firms first by embracing a proactive methodology when it comes to loss prevention and claims handling.

In addition to comprehensive coverage, CAMICO policyholders have access to the best practice and risk management services, expertise and tools, created by CPAs for CPAs. Member benefits include: subpoena response services, assistance with claims and potential claims, unlimited access to in-house experts, 150+ sample letter templates, risk management advice and more.

Interested in a no-obligation insurance premium quote?

Visit www.camico.com for more information, or call **800.652.1772** to speak with a CAMICO Representative.



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