DISCLAIMERS, RETAINERS, FEE AGREEMENTS, CIRCULAR 230

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BARBARA J. GARDNER graduated first in her class from South Texas College of Law in 1981, and she has built a career as a leading employment law attorney. Ms. Gardner represents primarily employees, and she has won numerous jury verdicts, several in seven figures. Ms. Gardner was a partner of Mandell & Wright in the 1980’s and 1990’s before moving to Kansas City where she was a member of the Popham Law Firm, a nationally known employment law firm. Ms. Gardner also taught trial advocacy to third-year law students at the University of Houston Law School 1991-1994 before moving to Kansas City. Ms. Gardner rejoined Mandell & Wright in January 2004, and then became a principal with Tucker, Vaughan, Gardner & Barnes, P.C. in July 2004.

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Ms. Gardner received her B.A. in music, with honors, from the University of Houston in 1974 and an additional B.A. in psychology, again with honors, from the University of Colorado in 1975. Before going to law school, Ms. Gardner sang on stage in Houston, Denver, and New Orleans. After law school, Ms. Gardner did post-graduate work as a judicial law clerk for the Honorable Carl O. Bue, Jr., United States District Court, Southern District of Texas.
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I. INTRODUCTION

This paper focuses primarily on fee agreements between attorneys and their clients. However, because the law of disclaimers touches upon other areas, that topic has been expanded with resources to assist you in other possible applications. Also, a Circular 230 checklist, created by the American Institute of Certified Public Accountants (“AICPA”), is attached.

II. DISCLAIMERS

A. Disclaimers Generally

There are a number of statutes which contain particular requirements for disclaimers to be valid. Some of these are listed in Exhibit A. The most common disclaimers are found in commercial transactions which are governed by the Texas Business & Commerce Code. Generally, a disclaimer must be conspicuous, meaning that a reasonable person ought to have noticed it. However, as discussed more fully below, the wording of the disclaimer itself must be clear and understandable to the particular reader.

In other instances disclaimers are governed by common law. The Texas Supreme Court has held that extraordinary risk-shifting clauses, for example, where one party agrees to indemnify another for the other’s own negligence, must satisfy two fair notice requirements. First, the agreement must meet the express negligence doctrine, which requires a party seeking indemnity from the consequences of that party's own negligence to express the intent in specific terms within the four corners of the contract. *Ethyl Corp. v. Daniel Const. Co.*, 725 S.W.2d 705, 707-08 (Tex.1987). Second, the agreement must meet the conspicuousness requirement. A provision is conspicuous if a reasonable person against whom a clause is to operate ought to have noticed the clause. *Id.* This characterization of conspicuousness is derived from the definition of conspicuousness as found in Section 1.201(10) of the Texas business and Commerce Code, which provides:

(10) “Conspicuous,” with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
While one may believe that conspicuousness of a disclaimer is the primary emphasis, the party against whom the disclaimer is sought to be charged must have actual knowledge and understanding of the meaning of the disclaimer. In *LaBella v. Charlie Thomas, Inc.*, 942 S.W.2d 127 (Tex. App. - Amarillo 1997, writ denied), the court held that while the disclaimers relied upon by Intercontinental and Mercedes-Benz were sufficiently conspicuous as a matter of law in a sales transaction, there was a fact question as to whether these disclaimers, which clearly referred to a sale of a vehicle, effectively disclaimed all implied warranties when the car was leased. The buyer’s understanding was a fact issue which required reversal. The Supreme Court has held that “inconspicuous language is immaterial when the buyer has actual knowledge of the disclaimer.” *Cate v. Dover Corp.*, 790 S.W.2d 559, 561 (Tex. 1990). But in the same opinion, the Court stated that it is the seller’s burden to prove that the buyer’s had actual knowledge of the disclaimer.

In the instance of a consumer, the Supreme Court has held that a disclaimer of an implied warranty against a consumer is not valid under the Texas Deceptive Trade Practices Act unless it is “clear and free from doubt.” *GWL, Inc. v. Robichaux*, 643 S.W.2d 392, 393 (Tex.1982).

**B. Fraudulent Inducement**

Notwithstanding that a document may contain a disclaimer, for example, when a buyer purchases property “as is,” a conspicuous disclaimer alone may not protect the seller. The matter of fraudulent inducement was discussed recently in *San Antonio Properties, L.P. v. PSRA Investments, Inc.*, ___ S.W.3d ___, 2008 WL 647781 (Tex. App. - San Antonio 2008, no pet.). A valid as-is agreement “prevents a buyer from holding a seller liable if the thing sold turns out to be worth less than the price paid because it is impossible for the buyer's injury on account of this disparity to have been caused by the seller.” *See Prudential Ins. Co. of Am. v. Jefferson Assoc., Ltd.*, 896 S.W.2d 156, 161 (Tex.1995). “By agreeing to purchase something ‘as is’, a buyer agrees to make his own appraisal of the bargain and to accept the risk that he may be wrong.” *Id.* Thus, a buyer's own evaluation “constitutes a new and independent basis for the purchase, one that disavows any reliance upon representations made by the seller.” *Pairett v. Gutierrez*, 969 S.W.2d 512, 516 (Tex. App. - Austin 1998, pet. denied). However, an as-is agreement may not have “this determinative effect in every circumstance.” *Prudential*, 896 S.W.2d at 162. “A buyer is not bound by an agreement to purchase something ‘as is’ that he is induced to make because of a fraudulent representation or concealment of information by the seller.” *Id.*

A buyer must prove that “but for” the representations of the seller regarding the condition of the property that is the subject of the contract, the buyer would not have assented to a contract that contained an as-is clause. *See Prudential*, 896 S.W.2d at 162 (seller cannot assure buyer of property's condition to obtain buyer's agreement to purchase 'as is', and then disavow the
assurance that procured the 'as is' agreement); *Fletcher v. Edwards*, 26 S.W.3d 66, 76 (Tex. App.-Waco 2000, pet. denied) (holding that if the buyers “were fraudulently induced to enter the real estate contract as they allege, that fraud vitiates all documents which the [buyers] executed as a part of the transaction.”); *Larsen v. Carlene Langford & Assoc., Inc.*, 41 S.W.3d 245, 253 (Tex. App. - Waco 2001, pet. denied) (holding, “To successfully raise ... fraudulent inducement the buyer must present some summary judgment evidence that ‘but for’ the representations of the seller regarding the condition of the subject of the contract, the buyer would not have assented to a contract which contained an ‘as is’ clause.”); *Procter v. RMC Capital Corp.*, 47 S.W.3d 828, 834 (Tex. App. - Beaumont 2001, no pet.) (agreeing with Larsen court). Therefore, the court will examine the record to determine whether the evidence sufficiently supports a finding on the elements of fraudulent inducement.

In *San Antonio Properties*, such evidence existed which supported the jury’s verdict of fraud. The defendant falsely showed that the commercial property, the apartment complex, was making a profit, when it was not. This was done through an accounting system designed to conceal the true economic performance of the apartments.

C. Advertising

The Texas Disciplinary Rules of Professional Conduct governing advertising also addresses disclaimers. Rule 7.04(q) provides that any disclaimers in an ad must have equal prominence:

> If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.

D. Fee Agreements

Applying these principles to attorneys’ fee agreements, we can surmise that any disclaimer must be (1) stated in a conspicuous manner, (2) stated in language understandable to the particular client, and (3) fully explained to the client in an open manner so that there can be no suggestion of fraud.

III. RETAINERS

Traditionally, retainers are based on the income lost and the costs incurred by an attorney who agrees to be on call to handle the client’s legal matters. *See* Restatement (Third) of the Law Governing Lawyers § 34, comment e (2000). However, as with any fee agreement, a retainer contract can be overridden by the rule that prohibits unconscionable fees. *See* Texas Disciplinary
Rules of Professional Conduct, Rule 1.04(a); see also Restatement (Third) of the Law Governing Lawyers § 34, comment a (2000) (stating that an unreasonable fee will not be enforced even if the parties agreed to it).

One issue that arises regarding retainers is whether the money is refundable. Generally, a retainer is non-refundable only if the attorney can establish that acceptance of the assignment precluded him or her from other work. *Cluck v. Commission for Lawyer Discipline*, 214 S.W.3d 736 (Tex. App. – Austin 2007, no pet.). An opinion by the Texas Committee on Professional Ethics discusses the difference between a retainer and an advance fee. *See* Tex. Comm. on Prof’l Ethics, Op. 431, 49 Tex. B.J. 1084 (1986). The opinion explains that a true retainer “is not a payment for services. It is an advance fee to secure a lawyer’s services, and remunerate him for loss of the opportunity to accept other employment.” *Id.* The opinion goes on to state that “[i]f the lawyer can substantiate that other employment will probably be lost by obligating himself to represent the client, then the retainer fee should be deemed earned at the moment it is received.” *Id.* If a fee is not paid to secure the lawyer’s availability and to compensate him for lost opportunities, then it is a prepayment for services and not a true retainer. *Id.* “A fee is not earned simply because it is designated as non-refundable. If the true retainer is not excessive, it will be deemed earned at the time it is received, and may be deposited in the attorney’s account.” *Id.* However, money that constitutes the prepayment of a fee belongs to the client until the services are rendered and must be held in a trust account. Texas Disciplinary Rules of Professional Conduct, Rule 1.14, comment 2.

“Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as … refunding any advance payments of fee that has not been earned.” Texas Disciplinary Rules Professional Conduct, Rule 1.15(d).

One way to make this clear to a client is to use two different terms: retainer and cost deposit. Both represent an advance payment for work to be done. However, as explained above, the lawyer may wish to define a “retainer” as a fee that is not refundable and that other employment likely will be lost by obligating himself to represent the client. One example of a utilizing a non-refundable retainer would be the undertaking to file a temporary restraining order, which requires immediate attention and sometimes many hours of work on short notice. The “cost deposit,” on the other hand, is money advanced for future work, with the remainder of the cost deposit to be refunded if not depleted. In either case, the funds should not be deposited in the firm’s operating account but in a trust account. The client should be sent a monthly statement showing how much of the funds have been expended with an accounting at the end of the assignment.

### IV. FEE AGREEMENTS

#### A. Texas Disciplinary Rules of Professional Conduct
Fee agreements are governed by Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct, attached as Exhibit B. The overriding requirement is that a fee cannot be “unconscionable.” This means simply that the fee must be reasonable. Factors in considering the reasonableness of a fee are:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

A fee may be contingent on the outcome of the matter for which the service is rendered, except that a lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

There are specific requirements for division of a fee between lawyers who are not in the same firm. This was the revision in the rules for “referral fees” that occurred on March 1, 2005. The referral fee must be (1) in proportion to the professional services performed by each lawyer or made between lawyers who assume joint responsibility for the representation; and (2) the client must consent in writing to the terms of the arrangement prior to the time of the association or referral.
proposed. The client’s consent must include: (a) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, (b) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and (c) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made. Also, the aggregate fee cannot be unconscionable. Further, the referral fee between the law firms must be confirmed in writing consistent with these requirements.

B. Contingent Fee Contracts

Although contingent fee contracts are increasingly used by businesses and other sophisticated parties, their primary purpose is to allow plaintiffs who cannot afford an attorney to obtain legal services by compensating the attorney from the proceeds of any recovery. *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex.1997). The contingent fee offers “the potential of a greater fee than might be earned under an hourly billing method” in order to compensate the attorney for the risk that he or she will receive “no fee whatsoever if the case is lost.” *Id.* In exchange, the client is largely protected from incurring a net financial loss in connection with the representation. This risk-sharing feature creates an incentive for lawyers to work diligently and obtain the best results possible. A closely related benefit is the contingent fee's tendency to reduce frivolous litigation by discouraging attorneys from presenting claims that have negative value or otherwise lack merit. *Hoover Slovacek LLP v. Walton*, 206 S.W.3d 557, 561 (Tex. 2006).

Some contingent contracts provide that the lawyer will recover the “higher of” two amounts. This is not a particularly good practice because it leaves the fee open to future events. It is better to have a clear understanding with the client in the beginning based on terms that are as predictable as possible. Also, it is advisable to be clear as to whether the percentage for the fee applies to the gross or the net recovery by the client. It is even helpful to show the new client an example of a form settlement statement, explaining how the fees and the expenses will be handled when the funds are collected.

C. Disputes between Attorney and Client

There are occasions when a client may sign a contingent contract with one attorney, but later take the case to a second attorney. The landmark case in this situation is *Mandell & Wright v. Thomas*, 441 S.W.2d 841 (Tex. 1969). In Texas, if an attorney hired on a contingent-fee basis is discharged without cause before the representation is completed, the attorney may seek compensation in *quantum meruit* or in a suit to enforce the contract by collecting the fee from any damages the client subsequently recovers. *Id.* at 847.

However, the ethical provisions of the Disciplinary Rules of Professional Conduct may override an attorney’s fee agreement, particularly Rule 1.04. As mentioned above, never can an attorney collect a fee from a client that is “unconscionable.” Whether a particular fee amount or
contingency percentage charged by the attorney is unconscionable under all relevant circumstances of the representation is an issue for the factfinder. See, e.g., Curtis v. Comm'n for Lawyer Discipline, 20 S.W.3d 227, 233 (Tex. App. - Houston [14th Dist.] 2000, no pet.) (concluding that the evidence was sufficient to support a finding that a contingent fee equaling 70-100% of the client's recovery was unconscionable). On the other hand, whether a contract, including a fee agreement between attorney and client, is contrary to public policy and unconscionable at the time it is formed is a question of law. See, e.g., Tex. Bus. & Com. Code § 2.302 (courts may refuse to enforce contracts determined to be unconscionable as a matter of law); Ski River Dev., Inc. v. McCalla, 167 S.W.3d 121, 136 (Tex. App. - Waco 2005, pet. denied) (“The ultimate question of unconscionability of a contract is one of law, to be decided by the court.”); Pony Express Courier Corp. v. Morris, 921 S.W.2d 817, 821 (Tex. App. - San Antonio 1996, no writ) (distinguishing procedural and substantive aspects of unconscionability).

The Supreme Court in Hoover Slovacek LLP v. Walton, 206 S.W.3d 557, 561 (Tex. 2006), found that the fee agreement was unconscionable and, thus, unenforceable against the client. “When interpreting and enforcing attorney-client fee agreements, it is not enough to simply say that a contract is a contract. There are ethical considerations overlaying the contractual relationship.” Id. at 560. The primary focus was the provision in the contract requiring the client to pay a liquidated fee, a penalty, for discharging the lawyer. This did not take into account that a client may fire an attorney for cause. Public policy strongly favors a client's freedom to employ a lawyer of his choosing and, except in some instances where counsel is appointed, to discharge the lawyer during the representation for any reason or no reason at all. See Martin v. Camp, 219 N.Y. 170, 114 N.E. 46, 48 (1916) (describing this policy as a “firmly established rule which springs from the personal and confidential nature” of the attorney-client relationship); see also Whiteside v. Griffis & Griffis, P. C., 902 S.W.2d 739, 746 (Tex. App. - Austin 1995, writ denied) (noting that the policy supporting a client's freedom to select his attorney precludes the application of commercial standards to agreements that restrict the practice of law); Texas Disciplinary Rules of Professional Conduct, Rule 1.15 comment 4 (“A client has the power to discharge a lawyer at any time, with or without cause....”).

However, the Supreme reaffirmed the validity of Mandell & Wright, which permits recovery of the fee if the lawyer is discharged without cause, stating:

Nonetheless, we recognize the valid competing interests of an attorney who, like any other professional, expects timely compensation for work performed and results obtained. Thus, attorneys are entitled to protection from clients who would abuse the contingent fee arrangement and avoid duties owed under contract. Striving to respect both interests, Mandell provides remedies to the contingent-fee lawyer who is fired without cause.

Id. at 563.

D. Disputes Between Attorneys
Even when the client approves of a division of fees between or among different attorneys, disputes still may arise. Courts typically construe agreements between the attorneys based on standard contract interpretation, not on Mandell & Wright. Lewis v. Chatelain, ___ S.W.3d ___, 2007 WL 4822502 (Tex. App. – Beaumont 2008, no pet.)

In interpreting unambiguous contracts, the courts give effect to the parties' intention as expressed or as apparent from the contract's language. City of Pinehurst v. Spooner Addition Water Co., 432 S.W.2d 515, 518 (Tex. 1968). Generally, when the parties do not define particular terms used in their agreement, courts give each word and phrase in the parties' agreement its plain, grammatical meaning unless such meaning would defeat the parties' intent as reflected by the entire agreement. See DeWitt County Elec. Co-op., Inc. v. Parks, 1 S.W.3d 96, 101 (Tex.1999); Reilly v. Rangers Mgmt., Inc., 727 S.W.2d 527, 529 (Tex.1987). Courts determine the parties' intent from the language of the contract and do not rely upon the unexpressed subjective intent of one party, “‘for it is objective, not subjective, intent that controls.’” Matagorda County Hosp. Dist. v. Burwell, 189 S.W.3d 738, 740 (Tex.2006) (quoting City of Pinehurst, 432 S.W.2d at 518). Also, the Supreme Court has stated that “a court should construe a contract from a utilitarian standpoint, bearing in mind the particular business activity sought to be served.” Lenape Res. Corp. v. Tenn. Gas Pipeline Co., 925 S.W.2d 565, 574 (Tex.1996).

E. Statutory Attorneys Fees

A number of statutes permit the recovery of court-awarded attorney’s fees. One of the best known is a contract dispute in which the prevailing party is entitled to recovery of attorney’s fees if proper notice has been given. See Section 38.002 Tex. Civ. Prac. & Rem. Code. Some other examples are listed in Exhibit C.

With respect to a fee agreement and statutory attorney’s fees, it is customary to state in the agreement whether the attorney or the client is entitled to recover any fees awarded by the court. Of course, if a client pays the fees as the litigation proceeds, the statutory fees should be paid as a reimbursement to the client, not to the attorney.

In almost every statute, the client must prevail in a final judgment before statutory attorney’s fees are awarded. Therefore, in contingent fee agreements, many times the attorney will have a percentage of the client’s recovery stated, in addition to recovery of the statutory fees. The contingent fee is calculated to compensate the attorney should the case settle before final judgment. However, attorneys must always bear in mind the prohibition against “unconscionable” fees.

F. Practical Considerations in Fee Agreements

While each attorney or law firm may have preferences for what is to be included in fee agreements with clients, here are some practical considerations to keep in mind.
1. The correct name of the client should be stated with the correct spelling. Because of the attorney-client privilege and possible waiver of this privilege, this distinction should be explained to an individual client in the very beginning, especially to clients with little experience with the legal system. Many times an individual will bring a spouse or other family member to the initial meeting, and the client must understand that having another person hearing the discussion of his/her case could waive the privilege, depending upon what is stated in the meeting.

2. The scope or purpose of the representation should be stated. This prevents the client from coming in with another different matter and expecting that you will represent him/her on any matter whatsoever. You may want to decline the new matter. This issue arises on occasion when the attorney has accepted representation of a plaintiff’s claim and later the plaintiff is sued on a counterclaim. You may include a provision that representation of a counterclaim will be paid on a different basis.

3. Of course, the fee structure should be stated clearly, as explained above, particularly the percentage of recovery if the matter is based on a contingent recovery. You should also state whether or not the client or the attorney will be entitled to recover any statutory attorney’s fees.

4. In contingent matters, you should state that the contingent fee is an assignment of part of the client’s cause of action, e.g., “In consideration of Attorneys’ services, the Client hereby conveys and assigns to Attorneys and agrees to pay Attorneys an undivided interest in and to all of Client’s claims and causes of action to the extent of the percentage set out in Paragraph 2.01 above.”

5. You may wish to state that no settlement will be made without the client’s approval, but that the client will not unreasonably withhold such approval of a settlement that you have recommended.

6. It is a good practice to state that you do not warrant or guarantee any particular outcome.

7. As explained more fully below, tax considerations are present in many lawsuits. Therefore, even in contingent suits it is a good practice to state that you have made no warranties or guarantees as to tax advice and that you have given no tax or investment advice regarding any recovery by the client. You may even state that the client is encouraged to seek advice from a Certified Public Accountant or tax attorney regarding any tax consequences.

8. In addition to explaining the fee arrangement, you must explain how any litigation expenses will be handled. Some attorneys advance the expenses during the case, some require payment of expenses by the client on a monthly basis, and some ask for the client to pay a monthly advance toward expenses. This is one area where clients without experience in litigation become confused. They often think that attorneys’ fees and expenses are the same, and that the attorney will pay all expenses. This distinction should be made very clear in the beginning.
9. If you require a retainer or cost deposit, it should be stated in the contract as to whether the funds or any part are refundable, and if not, why not.

10. You may wish to have a provision stating that you are entitled to withdraw from representation and that the client will cooperate in any withdrawal.

11. In complicated cases, you may need assistance of other attorneys. This should be explained in the contract, with a clear statement of who will pay the fees of any additional attorneys.

12. As with any contract, you should include a merger clause, that this agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter.

13. Some attorneys include an arbitration provision, and that is personal preference. If you do not wish to arbitrate, you should include the court and venue for resolving any dispute with the client.

14. In contingent contracts, you should also include an explanation of the Mandell & Wright principle explained above, that should the client terminate the contract without cause you will seek recovery of your contingent percentage stated in the contract.

It is important that the attorney, not the paralegal, sit down with the client in the beginning of the representation and go over the provisions of the fee agreement. The client should be permitted to ask any and all questions at the beginning, so that there are no misunderstandings. This is the source of dissatisfaction, again, more especially with clients who have no experience with the legal system, and attorneys should give the client the attention that he/she deserves to be able to understand the meaning of the fee agreement. Time spent in the beginning will save time and unhappiness, and even lawsuits, when the recovery is collected.

V. CIRCULAR 230

The topic of Internal Revenue Service (“IRS”) Circular 230 applies primarily to tax practitioners. However, many attorneys have chosen to include the Circular 230 disclaimer in their emails and correspondence, particularly bankruptcy attorneys and those who advise commercial clients. A Circular 230 disclaimer should say that any advice given to a taxpayer client is not intended and cannot be used for the purpose of avoiding penalties that are imposed by the IRS regarding the matters discussed in the letter or email. This statement is intended to eliminate the excuse that a taxpayer was following professional advice.

The IRS regulates what lawyers and Certified Public Accountants (“CPA’s”) can tell their clients, at least when they are giving advice about certain tax matters. A government publication, Circular
230, promulgated in 2005, lists the rules that must be followed when representing taxpayers in front of the IRS. Lawyers, CPAs, and Enrolled Agents (federally-authorized tax practitioner who has technical expertise in the field of taxation) are allowed to represent taxpayers in their dealings with the IRS. A failure to follow these rules in Circular 230 exposes the practitioner to a possible fine or other sanctions.

The IRS regulations governing tax practitioners require the addition of certain standard language to letters, memos, e-mails, and other correspondence concerning federal tax matters unless the attorney is willing to undertake extensive analysis of the facts underlying a transaction and legal authorities that address the tax treatment of the transaction. This includes written advice concerning planning related to, or the application of, any federal tax to a client’s business or personal affairs and would include business and personal tax planning and preparation written advice and written advice pertaining to estate planning or estate tax matters.

While the specific wording may vary depending on the circumstances, absent the thorough analysis of the facts, written advice from the attorney should contain language similar to the following:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses.

The IRS rules require such notices to be “prominently disclosed,” i.e., “readily apparent” to the reader. The notice must be in a separate section (but not in a footnote or as “fine print”) of the correspondence. The typeface used must be at least the same size as the typeface used in any discussion of facts or law.

IRS rules require that lawyers and other tax professionals tell the truth when talking to the IRS. They are also required to fully disclose possible penalties that may apply in gray areas when they advise clients to act in some ways that avoid tax. If a letter or email has the proper disclosure, it helps lawyers keep from making a mistake and breaking the rules.

The IRS sets high standards for tax professionals, including lawyers, CPAs and Enrolled Agents. Violation of IRS rules can result in a reprimand or even disbarment from practice before the IRS.

A brief summary of some of the major provisions of Circular 230 are:

- First, Section 10.20 requires (under certain limited conditions) that a practitioner provide information to the IRS regarding the identity of persons who may have possession or control of requested documents.
• Second, in addition to a requirement to notify a client about any noncompliance, error or omission on a client's part, Section 10.21 generally provides that a practitioner must advise the client of the consequences of such noncompliance, error or omission.
• Third, Section 10.27 clarifies the rules governing the prohibition on practitioners receiving a contingent fee for positions taken or to be taken on an original tax return.
• Finally, the regulations also address such issues as (a) the return of a client's records, (b) matters involving practitioner advertising and solicitations, (c) the disreputable conduct of a tax practitioner, and (d) IRS disciplinary proceedings.

Circular 230 amendments are one of the most significant changes in tax practice in many years. A tax practitioner's failure to comply with these new and extremely broad requirements can lead to censure, fines, suspension, even disbarment. A Circular 230 checklist, created by the American Institute of Certified Public Accountants (“AICPA”), is attached as Exhibit D. You can use this checklist to help determine: (1) if the advice you are giving a client falls within the definition of a "covered opinion"; (2) whether you should be including disclaimer language with your advice; and, (3) whether you have satisfied the requirements for "other written tax advice." See AICPA website, http://tax.aicpa.org.

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 2.202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof.”

(c) Notwithstanding Subsection (b)

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is”, “with all faults” or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 2.718 and 2.719).

(e) The implied warranties of merchantability and fitness shall not be applicable to the furnishing of human blood, blood plasma, or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma or tissue or organs shall not for the purpose of this Title be considered commodities subject to sale or barter, but shall be considered as medical services.

(f) The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young.

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed whenever reasonable, as consistent with each other; but, subject to the provisions of Section 2A.202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention “merchantability,” be by a writing, and be conspicuous. Subject to Subsection (c), to exclude or modify an implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, “There is no warranty that the goods will be fit for a particular purpose.”

(c) Notwithstanding Subsection (b), but subject to Subsection (d):

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is,” or “with all faults,” or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(2) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(3) an implied warranty also may be excluded or modified by course of dealing, course of performance, or usage of trade.

(d) To exclude or modify a warranty against interference or against infringement (Section 2A.211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

(a) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(c) With the exception of this subsection, Subsections (a) and (d), Sections 5.102(a)(9) and (10), Section 5.106(d), Section 5.110(c), and Section 5.114(d) and except to the extent prohibited in Sections 1.302 and 5.117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.


A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown,” “said to contain,” or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents or condition of contents of packages unknown,” “said to contain,” “shipper's weight, load and count,” or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of the bill of lading, the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as “shipper's weight, load and count,” or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, “shipper's weight” or words of similar import are ineffective.

(d) The issuer, by including in the bill of lading the words “shipper's weight, load and count,” or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

(a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under Subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under Subsection (e) if it indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses words of similar import.


The secretary of state may require the applicant to disclaim or the applicant may voluntarily disclaim an unregistrable component of a mark that is otherwise registrable. A disclaimer may not prejudice or affect the:

(1) rights of the applicant or registrant in the disclaimed matter; or

(2) rights of the applicant or registrant to make an application to register a mark if the disclaimed matter is distinctive of the goods or services of the applicant or registrant.

(a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if:

1. the waiver is in writing and is signed by the consumer;
2. the consumer is not in a significantly disparate bargaining position; and
3. the consumer is represented by legal counsel in seeking or acquiring the goods or services.

(b) A waiver under Subsection (a) is not effective if the consumer's legal counsel was directly or indirectly identified, suggested, or selected by a defendant or an agent of the defendant.

(c) A waiver under this section must be:

1. conspicuous and in bold-face type of at least 10 points in size;
2. identified by the heading “Waiver of Consumer Rights,” or words of similar meaning; and
3. in substantially the following form:

“I waive my rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of my own selection, I voluntarily consent to this waiver.”

(d) The waiver required by Subsection (c) may be modified to waive only specified rights under this subchapter.

(e) The fact that a consumer has signed a waiver under this section is not a defense to an action brought by the attorney general under Section 17.47.

(a) To ensure that the school district does not discriminate against a student's publicly stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or perceived affirmative school sponsorship or attribution to the district of a student's expression of a religious viewpoint, if any, a school district shall adopt a policy, which must include the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require the school district to:

(1) provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;

(2) provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;

(3) ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and

(4) state, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the district.

(b) The school district disclaimer required by Subsection (a)(4) must be provided at all graduation ceremonies. The school district must also continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's nonsponsorship of the student's speech.

(c) Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.
§ 255.001 Political Advertising & Campaign Communications - Required Disclosure on Political Advertising – Election Code

(a) A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising:

(1) that it is political advertising; and

(2) the full name of:

(A) the person who paid for the political advertising;

(B) the political committee authorizing the political advertising; or

(C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

(b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.

(c) A person may not knowingly use, cause or permit to be used, or continue to use any published, distributed, or broadcast political advertising containing express advocacy that the person knows does not include the disclosure required by Subsection (a). A person is presumed to know that the use of political advertising is prohibited by this subsection if the commission notifies the person in writing that the use is prohibited. A person who learns that political advertising signs, as defined by Section 255.007, that have been distributed do not include the disclosure required by Subsection (a) or include a disclosure that does not comply with Subsection (a) does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct those signs. A person who learns that printed political advertising other than a political advertising sign that has been distributed does not include the disclosure required by Subsection (a) or includes a disclosure that does not comply with Subsection (a) is not required to attempt to recover the political advertising and does not commit a continuing violation of this subsection as to any previously distributed political advertising.

(d) This section does not apply to:

(1) tickets or invitations to political fund-raising events;

(2) campaign buttons, pins, hats, or similar campaign materials; or

(3) circulars or flyers that cost in the aggregate less than $500 to publish and distribute.

(e) A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed $4,000.
Rule 7.02  Disciplinary Rules of Professional Conduct - Communications Concerning a Lawyer's Services – Government Code

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict.

(ii) the amount involved was actually received by the client,

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or

(7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7. 02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.
(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:


(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, “Board Certified, area of specialization -- Texas Board of Legal Specialization;” and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, “Certified area of specialization name of certifying organization,” but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the
special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement;

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously, and in language easily understood by an ordinary consumer.

(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the Internet, or electronic, or digital media.

(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.

(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.

(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.

(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the
lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and
(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.
§ 166.053 Registry to Assist Transfers – Health & Safety Code

(a) The Texas Health Care Information Council shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the council they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to accept transfer of or provide services to any particular patient.

(c) The Texas Health Care Information Council shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients and shall provide a clearly identifiable link from its home page to the registry page. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;

(2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

“This registry lists providers and groups that have indicated to the Texas Health Care Information Council their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Texas Health Care Information Council nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups.”
§ 324.051. Department Website – Health & Safety Code

(a) The department shall make available on the department's Internet website a consumer guide to health care. The department shall include information in the guide concerning facility pricing practices and the correlation between a facility's average charge for an inpatient admission or outpatient surgical procedure and the actual, billed charge for the admission or procedure, including notice that the average charge for a particular inpatient admission or outpatient surgical procedure will vary from the actual, billed charge for the admission or procedure based on:

(1) the person's medical condition;

(2) any unknown medical conditions of the person;

(3) the person's diagnosis and recommended treatment protocols ordered by the physician providing care to the person; and

(4) other factors associated with the inpatient admission or outpatient surgical procedure.

(b) The department shall include information in the guide to advise consumers that:

(1) the average charge for an inpatient admission or outpatient surgical procedure may vary between facilities depending on a facility's cost structure, the range and frequency of the services provided, intensity of care, and payor mix;

(2) the average charge by a facility for an inpatient admission or outpatient surgical procedure will vary from the facility's costs or the amount that the facility may be reimbursed by a health benefit plan for the admission or surgical procedure;

(3) the consumer may be personally liable for payment for an inpatient admission, outpatient surgical procedure, or health care service or supply depending on the consumer's health benefit plan coverage;

(4) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for an inpatient admission, outpatient surgical procedure, or health care service or supply; and

(5) the consumer, if uninsured, may be eligible for a discount on facility charges based on a sliding fee scale or a written charity care policy established by the facility.

(c) The department shall include on the consumer guide to health care website:

(1) an Internet link for consumers to access quality of care data, including:

(A) the Texas Health Care Information Collection website;
(B) the Hospital Compare website within the United States Department of Health and Human Services website;

(C) the Joint Commission on Accreditation of Healthcare Organizations website; and

(D) the Texas Hospital Association's Texas PricePoint website; and

(2) a disclaimer noting the websites that are not provided by this state or an agency of this state.

(d) The department may accept gifts and grants to fund the consumer guide to health care. On the department's Internet website, the department may not identify, recognize, or acknowledge in any format the donors or grantors to the consumer guide to health care.
§ 463.114 Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association - Summary Document; Disclaimer – Insurance Code

(a) The association shall prepare a summary document describing the general purposes and limitations of this chapter and amend the document as necessary to comply with this chapter. The document must clearly and conspicuously contain on the document's face a disclaimer that:

(1) states the name and address of the association and department;

(2) warns the policy or contract holder that:

   (A) the association may not cover the policy; or

   (B) coverage, if available, is subject to substantial limitations and exclusions and requires continuous residence in this state;

(3) states that an insurer and the insurer's agent are prohibited by law from using the association's existence to sell, solicit, or induce the purchase of any kind of insurance;

(4) warns the policy or contract holder not to rely on association coverage in selecting an insurer; and

(5) provides other information the commissioner prescribes.

(b) The association shall submit the document to the commissioner for approval.

(c) At the expiration of the 60th day after approval of the document, an insurer may not deliver a policy or contract with respect to which this chapter provides coverage as determined under Subchapter E to a policy or contract holder before a copy of the summary document is delivered to the policy or contract holder. The document must also be available on request of a policyholder.

(d) The distribution, delivery, content, or interpretation of a summary document does not guarantee that a policy or contract or a policy or contract holder is provided coverage by this chapter if a member insurer becomes impaired or insolvent. Failure to receive the document does not give an insured or policy, contract, or certificate holder any rights greater than those provided by this chapter.

(e) An insurer or agent may not deliver a policy or contract described by Section 463.202 that is excluded from the coverage provided by this chapter by Section 463.203 unless the insurer or agent, either before or in conjunction with delivery, gives the policy or contract holder a separate written notice clearly and conspicuously disclosing that the policy or contract is not covered by the association.

(f) The commissioner shall specify by rule the form and content of the disclaimer required by Subsection (a) and the notice required by Subsection (e).

(a) The commissioner shall develop or adopt an informational sheet in the Spanish language to provide a general explanation of the terms most commonly used in the Texas personal automobile insurance policy. The department shall make the informational sheet available to the public.

(b) The informational sheet is intended to provide only a general explanation of insurance terms used in the Texas personal automobile insurance policy and is not intended to alter any rights, obligations, or responsibilities of the contracting parties. All other applicable laws, including provisions of this code, apply regardless of whether an informational sheet is used.

(c) The informational sheet must include a disclaimer in the Spanish language, prominently printed in 10-point boldfaced type at the top of the informational sheet, that contains the following:

“This document is for informational purposes only and is not intended to alter or replace the insurance policy. Additionally, this informational sheet is not intended to fully set out your rights and obligations or the rights and obligations of the insurer. If you have questions about your insurance, you should consult your insurance agent, the insurer, or the language of the insurance policy.”
§ 823.010 Insurance Holding Company Systems - Disclaimer of Affiliation – Insurance Code

(a) A disclaimer of affiliation with an authorized insurer may be filed with the commissioner by any person, including the authorized insurer or a member of an insurance holding company system.

(b) The disclaimer must fully disclose:

(1) all material relationships and bases for affiliation between the person and the insurer; and

(2) the basis for disclaiming the affiliation.

(c) After the disclaimer is filed:

(1) the insurer is not required to register or report under Subchapter B because of a duty that arises out of the insurer's relationship with the person unless the commissioner disallows the disclaimer, in which event the duty to register or report begins on the date of the disallowance; and

(2) the person is not required to comply with Sections 823.154, 823.155, 823.159, and 823.160 unless the commissioner disallows the disclaimer.

(d) The commissioner may disallow the disclaimer only after:

(1) providing to each party in interest notice of and the opportunity to be heard on the disallowance; and

(2) making specific findings of fact to support the disallowance.
§ 1214.003 Advertising for Certain Health Benefits - Rate Information Disclaimers – Insurance Code

<Text of section effective April 1, 2009>

(a) Subject to Chapter 541 and Section 543.001, an advertisement for a health benefit plan may include rate information without including information about each benefit exclusion or limitation if the advertisement includes prominent disclaimers clearly indicating that:

(1) the rates are illustrative;

(2) a person should not send money to the health benefit plan issuer in response to the advertisement;

(3) a person cannot obtain coverage under the plan until the person completes an application for coverage; and

(4) benefit exclusions or limitations may apply to the plan.

(b) An advertisement that states a rate must also indicate the age, gender, and geographic location on which the rate is based.

§ 353.159 Contact Lens Prescription - Waiver or Disclaimer of Liability Prohibited – Occupations Code

A contact lens prescription may not contain, and a physician, optometrist, or therapeutic optometrist may not require a patient to sign, a form or notice that waives or disclaims the liability of the physician, optometrist, or therapeutic optometrist for the accuracy of:

(1) the eye examination on which a contact lens prescription provided to the patient is based; or

(2) a contact lens prescription provided to the patient.

§ 1201.155 Manufactured Housing - Disclaimer of Implied Warranty – Occupations Code

The seller's proper provision of the warranties and notices as required by Subchapter H (Occupations Code § 1201.351) or J (Occupations Code § 1201.451) is a valid disclaimer of an implied warranty of fitness for a particular purpose or of merchantability as described by Chapter 2, Business & Commerce Code.
§ 41.0051 Interests in Land - Disclaimer and Disclosure Required – Property Code

(a) A person may not deliver a written advertisement offering, for a fee, to designate property as a homestead as provided by Section 41.005 unless there is a disclaimer on the advertisement that is conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters that makes the following statement or a substantially similar statement:

THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES. IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS.

(b) A person who solicits solely by mail or by telephone a homeowner to pay a fee for the service of applying for a property tax refund from a tax appraisal district or other governmental body on behalf of the homeowner shall, before accepting money from the homeowner or signing a contract with the homeowner for the person's services, disclose to the homeowner the name of the tax appraisal district or other governmental body that owes the homeowner a refund.

(c) A person's failure to provide a disclaimer on an advertisement as required by Subsection (a) or to provide the disclosure required by Subsection (b) is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), Business & Commerce Code, and is subject to action by the consumer protection division of the attorney general's office as provided by Section 17.46(a), Business & Commerce Code.
§ 112.010 Creation of Trust - Acceptance or Disclaimer by or on Behalf of Beneficiary – Property Code

(a) Acceptance by a beneficiary of an interest in a trust is presumed.

(b) If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law.

(c) Except as provided by Subsection (c-1) of this section, the following persons may disclaim an interest in a trust created in any manner other than by will:

(1) a beneficiary, including a beneficiary of a spendthrift trust;

(2) the personal representative of an incompetent, deceased, unborn or unascertained, or minor beneficiary, with court approval by the court having jurisdiction over the personal representative; and

(3) the independent executor of a deceased beneficiary, without court approval.

(c-1) A person authorized to disclaim an interest in a trust under Subsection (c) of this section may not disclaim the interest if the person in his capacity as beneficiary, personal representative, or independent executor has either exercised dominion and control over the interest or accepted any benefits from the trust.

(c-2) A person authorized to disclaim an interest in a trust under Subsection (c) of this section may disclaim an interest in whole or in part by:

(1) evidencing his irrevocable and unqualified refusal to accept the interest by written memorandum, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate; and

(2) delivering the memorandum to the trustee or, if there is not a trustee, to the transferor of the interest or his legal representative not later than the date that is nine months after the later of:

(A) the day on which the transfer creating the interest in the beneficiary is made;

(B) the day on which the beneficiary attains age 21; or

(C) in the case of a future interest, the date of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

(d) A disclaimer under this section is effective as of the date of the transfer of the interest involved and relates back for all purposes to the date of the transfer and is not subject to the claims of any creditor of the disclaimant. Unless the terms of the trust provide otherwise, the interest that is the subject of the disclaimer passes as if the person disclaiming had predeceased the transfer and a future interest that would otherwise take effect in possession or enjoyment after the termination of
the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the transfer. A disclaimer under this section is irrevocable.

(e) Failure to comply with this section makes a disclaimer ineffective except as an assignment of the interest to those who would have received the interest being disclaimed had the person attempting the disclaimer died prior to the transferor of the interest.

§ 141.012 Transfers to Minors - Validity and Effect of Transfer – Property Code

(a) The validity of a transfer made in a manner prescribed by this chapter is not affected by the:

(1) transferor's failure to comply with Section 141.010(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 141.010(a); or

(3) death or incapacity of a person nominated under Section 141.004 or designated under Section 141.010 as custodian or the disclaimer of the office by that person.

(b) A transfer made under Section 141.010 is irrevocable, and the custodial property is indefeasibly vested in the minor. The custodian has all the rights, powers, duties, and authority provided in this chapter, and the minor or the minor's legal representative does not have any right, power, duty, or authority with respect to the custodial property except as provided by this chapter.

(c) By making a transfer, the transferor incorporates all the provisions of this chapter in the disposition and grants to the custodian, or to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided by this chapter.
Article 21.20-2 § 2(a) – Advertisement for Health Benefit Plan – Insurance Code

Subject to Article 21.21 of this code, an advertisement for a health benefit plan may include rate information without including information about all benefit exclusions and limitations if the advertisement includes prominent disclaimers that clearly indicate that:

(1) the rates are illustrative;

(2) a person should not send money to the issuer of the health benefit plan in response to the advertisement;

(3) a person cannot obtain coverage under the health benefit plan until the person completes an application for coverage; and

(4) benefit exclusions and limitations may apply to the health benefit plan.
§ 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable From a Decedent – Probate Code

(a) Persons Who May Disclaim. Any person, or the guardian of an incapacitated person, the personal representative of a deceased person, or the guardian ad litem of an unborn or unascertained person, with prior court approval of the court having, or which would have, jurisdiction over such guardian, personal representative, or guardian ad litem, or any independent executor of a deceased person, without prior court approval, or an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers that is executed by a principal, who may be entitled to receive any property as a beneficiary and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided.

(b) Effective Date of Disclaimer. A disclaimer evidenced as provided by this section shall be effective as of the death of decedent and shall relate back for all purposes to the death of the decedent and is not subject to the claims of any creditor of the disclaimant.

(c) Effect of Disclaimer. Unless the decedent's will provides otherwise, the property subject to the disclaimer shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent and a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the decedent.

(d) Ineffective Disclaimer. Failure to comply with the provisions of this section shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent.

(e) Definitions. The term “property” as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term “disclaimer” as used in this section shall include “renunciation.” In this section “beneficiary” includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person by inheritance, under a will, by an agreement between spouses for community property with a right of survivorship, by a joint tenancy with a right of survivorship, or by any other survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary, by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement, or under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual.

(f) Subsequent Disclaimers. Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer.
(g) **Form of Disclaimer.** In the case of property receivable by a beneficiary, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate.

(h) **Filing of Disclaimer.** Unless the beneficiary is a charitable organization or governmental agency of the state, a written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer disclaiming a present or future interest shall be filed not later than the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code, or the expiration of the six-month period following the date the personal representative files the inventory, appraisement, and list of claims due or owing to the estate, whichever occurs later. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(i) **Notice of Disclaimer.** Unless the beneficiary is a charitable organization or governmental agency of the state, copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the death of the decedent or, if the interest is a future interest, not later than nine months after the date the person who will receive the property or interest is finally ascertained and the person's interest is indefeasibly vested. If the beneficiary is a charitable organization or government agency of the state, the notices required by this section shall be filed not later than the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code, or the expiration of the six-month period following the date the personal representative files the inventory, appraisement, and list of claims due or owing to the estate, whichever occurs later.

(j) **Power to Provide for Disclaimer.** Nothing herein shall prevent a person from providing in a will, insurance policy, employee benefit agreement, or other instrument for the making of
disclaimers by a beneficiary of an interest receivable under that instrument and for the disposition of disclaimed property in a manner different from the provisions hereof.

(k) Irrevocability of Disclaimer. Any disclaimer filed and served under this section shall be irrevocable.

(l) Partial Disclaimer. Any person who may be entitled to receive any property as a beneficiary may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(m) Partial Disclaimer by Spouse. Without limiting Subsection (l) of this section, a disclaimer by the decedent's surviving spouse of a transfer by the decedent is not a disclaimer by the surviving spouse of all or any part of any other transfer from the decedent to or for the benefit of the surviving spouse, regardless of whether the property or interest that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse by the other transfer.

(n) Disclaimer After Acceptance. No disclaimer shall be effective after the acceptance of the property by the beneficiary. For the purpose of this subsection, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of beneficiary.

(o) Interest in Trust Property. A beneficiary who accepts an interest in a trust is not considered to have a direct or indirect interest in trust property that relates to a licensed or permitted business and over which the beneficiary exercises no control. Direct or indirect beneficial ownership of not more than five percent of any class of equity securities that is registered under the Securities Exchange Act of 1934 shall not be deemed to be an ownership interest in the business of the issuer of such securities within the meaning of any statute, pursuant thereto.
EXHIBIT B

Texas Disciplinary Rules of Professional Conduct
Client-Lawyer Relationship
Rule 1.04. Fees

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

(b) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(c) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (e) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the
outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(e) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

(f) A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is:

(i) in proportion to the professional services performed by each lawyer; or

(ii) made between lawyers who assume joint responsibility for the representation; and

(2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including:

(i) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, and

(ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and

(iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and

(3) the aggregate fee does not violate paragraph (a).

(g) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph (f). Consent by a client or a prospective client without knowledge of the information specified in subparagraph (f)(2) does not constitute a confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for:

(1) the reasonable value of legal services provided to that person; and

(2) the reasonable and necessary expenses actually incurred on behalf of that person.

(h) Paragraph (f) of this rule does not apply to payment to a former partner or associate pursuant to a separation or retirement agreement, or to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, Tex. Occ. Code 952.001 et seq., or any amendments or recodifications thereof.
EXHIBIT C

STATUTORY ATTORNEYS FEES

1. Section 38.002, Tex. Civ. Prac. & Rem. Code – prevailing party in dispute involving (1) rendered services; (2) performed labor; (3) furnished material; (4) freight or express overcharges; (5) lost or damaged freight or express; (6) killed or injured stock; (7) a sworn account; or (8) an oral or written contract; requires thirty days notice.

2. Deceptive Trade Practices - Section 17.50(c), Tex. Bus. & Com. Code – defendant entitled to recovery of fees and cost upon finding that action was groundless in law or fact, or brought in bad faith, or brought for the purpose of harassment.


5. Section 27.01(e) Tex. Bus. & Com. Code – Fraud in Real Estate or Stock Transactions.


11. Section 105.002, Tex. Civ. Prac. & Rem. Code – State’s claim is frivolous, unreasonable, or without foundation; and the action is dismissed or judgment is awarded to the party.


17. Section 305.005, Finance Code – Usurious interest.
18. Section 349.001, Finance Code – Interest greater than contract or in excess of legal rate.
22. Section 541.152, Insurance Code – Consumer prevails on unfair action by insurance company.
27. Section 417.003, Labor Code – Fee to claimant’s attorney in worker’s compensation third-party action.
28. Section 91.406, Natural Resources Code – Enforcement of right to payment for interest in oil and gas lease.
30. Section 2501.203, Occupations Code – Recovery against personnel service.
31. Section 5.006, Property Code – Restrictive covenant pertaining to real property.
32. Section 21.019, Property Code – Prevailing in motion to dismiss condemnation proceedings.
34. Section 27.0031, Property Code – Residential Construction Liability Act, action that is groundless and brought in bad faith or for purposes of harassment.
35. Section 53.156, Property Code – Mechanic’s, contractor’s, or materialman’s lien.
36. Section 70.008, Property Code – Suit for possession of a motor vehicle, motorboat, vessel, or outboard motor and a debt due on it, prevailing party.

37. Section 92.005, Property Code – Landlord/tenant.


40. Section 33.48, Tax Code – Fees recovered by taxing unit for delinquent taxes.

41. Section 42.29, Tax Code – Property owner prevails in challenging appraisal of real property.


43. Sections 233 and 242, Probate Code – Collection of claims and debts due estate.

44. Section 243, Probate Code – Defending a will.

45. Section 245, Probate Code – Removing personal representative for cause.

46. Section 26.05, Code of Criminal Procedure – Appointing attorney to represent criminal defendant.

Exhibit D

CHECKLIST FOR PROVIDING WRITTEN TAX ADVICE UNDER CIRCULAR 230

PREAMBLE: The IRS has adopted new strict standards for issuing written Federal tax advice. These new rules are effective June 20, 2005, and apply to any type of written tax advice that you provide to taxpayers or other third parties, including formal and informal memoranda, letters, faxes, and emails. They do not apply to oral advice or written memoranda or correspondence that is intended for internal use only and will not be issued to taxpayers.

The new rules are contained in §§10.33 through 10.39 of Title 31 of the United States Code. As you complete this checklist, you should pay particular attention to whether your written tax advice falls within the definition of a “covered opinion” (see Section 200 of this Checklist), and whether you can opt out of the covered opinion rules by including the proper “opt out language” in your advice (see Sections 203(4) and 204(3) of this Checklist). If your written tax advice is not subject to the covered opinion rules, you will want to ensure that your advice satisfies the requirements for other written tax advice contained in Section 500 of this Checklist.
CHECKLIST FOR PROVIDING WRITTEN TAX ADVICE UNDER CIRCULAR 230

Client Name and Number: ____________________________________________________________________________

Prepared by: ___________________________ Date: __________ Reviewed by: ___________________________ Date: __________

<table>
<thead>
<tr>
<th>YES</th>
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<th>EXPLANATION</th>
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</table>

100) GENERAL REQUIREMENTS UNDER §10.35 OF CIRCULAR 230

101) The tax advice must be in writing.

Is your tax advice in writing (i.e., is your advice included in any form of written communication, such as letters, memoranda, faxes, or emails, to the taxpayer or to other third parties who may rely on the advice to avoid penalties)?

If your answer is “no,” your advice is not subject to Circular 230 and you do not need to complete this checklist.

102) The tax advice must concern a Federal tax issue.

.1) Does your advice address the Federal tax treatment of:

.b) An item of income?

.c) An item of gain?

.d) An item of loss?

.e) An item of deduction?

.f) A credit?

.g) The existence or absence of a taxable transfer of property?

.h) The value of property for Federal tax purposes?

(If your answer to any of the above questions is “yes,” your advice concerns a Federal tax issue. If your answer to all of the above questions is “no,” your advice is not subject to Circular 230. You should consult state law, however, if you are providing state tax advice. For example, some states, such as California and South Carolina, have adopted the standards of Circular 230.)
.2) The Federal tax issue must be significant.

.a) Does the IRS have a reasonable basis for a successful challenge?

.b) Would the resolution of the issue have a significant (i.e., material) impact, whether beneficial or adverse and under any reasonably foreseeable circumstances, on the overall Federal tax treatment of the transaction(s) or matter(s) addressed in the opinion?

If your answers to both questions are “yes,” the Federal tax issue is significant, and you should proceed to Section 103.

.c) If the answer to either of the questions in .a or .b is “no,” does your advice comply with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?

If your answer to the question in .c is “no,” your advice fails to meet the standards under Circular 230.

103) Certain types of advice are specifically excluded from the covered opinion rules, such as.

.1) Preliminary Advice

.a) Do you plan to issue subsequent written advice that will satisfy the covered opinion rules?

If your answer to the question in .a is “no,” proceed to question 103.2.

.b) If your answer to the question in .a is “yes,” the covered opinion rules do not apply, but has your preliminary advice complied with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?

If your answer to the question in .b is “no,” your advice fails to meet the standards under Circular 230.

.2) Advice Related to Previously Filed Tax Returns

.a) Does all of the advice relate to a transaction(s) that is reflected in a U.S. tax return that has already been filed by the taxpayer?

If your answer to the question in .a is “no,” proceed to question 103.3.

.b) If your answer to the question in .a is “yes,” does the taxpayer plan to rely upon the
advice in filing a future tax return, including an amended return?  

If your answer to the question in .b is “yes,” proceed to question 103.3.

c) If your answer to the question in .b is “no,” the covered opinion rules do not apply, but has your advice complied with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?  

If your answer to the question in .c is “no,” your advice fails to meet the standards under Circular 230.

3) Advice Furnished by an Employee

.a) Is all of the advice being provided by an employee (e.g., in-house counsel) to his/her employer solely for the purpose of determining the tax liability of the employer?  

If your answer to the question in .a is “no,” proceed to question 103.4.

.b) If your answer to the question in .a is “yes,” the covered opinion rules do not apply, but does your tax advice comply with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?  

If your answer to the question in .b is “no,” your advice fails to meet the standards under Circular 230.

4) Negative Tax Advice

.a) Does any of your tax advice reach a conclusion that is favorable to the taxpayer at any confidence level (including the not frivolous, realistic possibility of success, reasonable basis, or substantial authority confidence levels)?  

If your answer to the question in .a is “yes,” proceed to question 103.5.

.b) If your answer to the question in .a is “no,” the covered opinion rules do not apply, but does your tax advice comply with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?  

If your answer to the question in .b is “no,” your advice fails to meet the standards under Circular 230.
.5) Other Excluded Advice

.a) Do all Federal tax issues in your advice concern one of the following:

   .i.) The qualification of a qualified plan?  
   .ii.) A state or local bond opinion?  
   .iii.) Documents required to be filed with the SEC?

If your answer to all of the questions in .a is “no,” proceed to Section 200.

.b) If your answer to any of the above three questions is “yes:”

   .i.) Does any of the advice relate to a listed transaction (as defined under Reg. §1.6011-4(b)(2))?  
   .ii.) Does any of the advice involve a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, the principal purpose of which is the avoidance or evasion of federal tax (i.e., is it a “principal purpose transaction”)? (See 202), below, for the meaning of “principal purpose.”)

If your answer to either of the above questions is “yes,” the covered opinion rules apply and you should proceed to Section 200.

.c) If your answer to both of the above questions is “no,” the covered opinion rules do not apply, but does your advice comply with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?

If your answer to the question in .c is “no,” your advice fails to meet the standards under Circular 230.

.d) If your advice is included in state or local bond opinion, have you complied with the additional rules under paragraph (b)(9) of §10.35 of Circular 230?

If your answer to the question in .d is “no,” your advice fails to meet the standards under Circular 230.
transaction that is the same or substantially the same as a listed transaction?  

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>EXPLANATION</th>
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</table>

If your answer to the question in .1 is “no,” proceed to Section 202.

.2) If your answer to the question in .1 is “yes,” your advice is a covered opinion. In this case, does your advice satisfy the covered opinion rules under §10.35 of Circular 230 (see Section 400)?  

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<thead>
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<th>YES</th>
<th>NO</th>
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<th>EXPLANATION</th>
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202) “Principal Purpose” Transactions

.1) Do all Federal tax issues addressed in the written advice concern a partnership or other entity, an investment plan or arrangement, or other plan or arrangement that is consistent with the Internal Revenue Code (the “Code”) or Congressional intent?  

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>EXPLANATION</th>
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</table>

If your answer to the question in .1 is “yes,” proceed to Section 203.

.2) If your answer to the question in .1 is “no,” is the principal purpose of the transaction or arrangement the avoidance or evasion of any tax imposed by the Code (i.e., does tax avoidance or evasion of Federal tax exceed any other purpose)?  

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<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>EXPLANATION</th>
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If your answer to the question in .2 is “no,” proceed to Section 203.

.3) If your answer to the question in .2 is “yes,” your advice is a covered opinion. In this case, does your advice satisfy the covered opinion rules under §10.35 of Circular 230 (see Section 400)?  

<table>
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<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>EXPLANATION</th>
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203) Reliance Opinions

.1) Does any Federal tax issue covered in the advice relate to any partnership or other entity, any investment plan, or any other plan or arrangement, a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code (a “significant purpose transaction”)? (Note: Unlike a principal purpose transaction, a transaction can be a significant purpose transaction even if all Federal tax issues addressed in the advice concern a transaction or arrangement that is consistent with the Code or Congressional intent).  

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<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>

If your answer to the question in .1 is “no,” proceed to Section 204.

.2) Is any Federal tax issue covered in the advice a
significant Federal tax issue, as defined under Section 102.2, above?  

If your answer to the question in .2 is “no,” proceed to Section 204.

.3) Does the advice reach a conclusion of more likely than not (i.e., a greater than 50-percent likelihood of success) that one or more Significant Federal Tax Issues will be resolved in the taxpayer’s favor?  

If your answer to the question in .3 is “no,” proceed to Section 204.

(Note: Opinions at the “substantial authority” level are not reliance opinions. The substantial authority standard is less stringent than the more-likely-than-not-standard, but more stringent than the reasonable basis standard, as defined in Reg. §1.6662-3(b)(3). [Reg. §1.6662-4(d)(2)] Substantial authority is the level the taxpayer needs to be able to claim a reasonable reliance defense to avoid certain penalties. Substantial authority opinions are subject to the standards for other written tax advice under §10.37 of Circular 230 (see Section 500), and not the covered opinion rules unless something else, such as marketing or conditions of confidentiality, bring the opinion within the covered opinion standards.)

.4) Does the advice contain the proper “opt out language”? That is, does the written advice prominently disclose (within the meaning of 300), below) that the advice was not intended or written to be used, and that it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer?  

.5) If your answers to all of the previous four questions are “yes,” the covered opinion rules do not apply, but does your advice comply with the rules for other written tax advice under §10.37 of Circular 230 (see Section 500)?

If your answer in question .5 is “no,” your advice fails to meet the standards under Circular 230.

.6) If your answers to the questions in .1, .2, and .3 are “yes,” but your answer to the question in .4 is “no,” does your advice comply with the covered opinion rules provided under §10.35 of Circular 230 (see Section 400)?
204) Marketed Opinions

.1) Does any Federal tax issue covered in your advice relate to a significant purpose transaction, as defined in Section 203.1, above?  

If your answer to the question in .1 is “no,” proceed to Section 205.

.2) Do you know or have reason to know that your advice will be used or referred to by a person other than you or someone affiliated with your firm to promote, market, or recommend a partnership or other entity, investment plan, or arrangement to one or more taxpayers?  

If your answer to the question in .2 is “no,” proceed to Section 205.

.3) Does your advice contain the proper “opt out language”? That is, does the written advice prominently disclose (within the meaning of 300), below that:

.a) The advice was not intended or written to to be used, and that it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer?  

.b) The advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed in the written advice?  

.c) The taxpayer should seek advice based on the taxpayer’s particular circumstances from an independent tax advisor?  

.4) If your answer to any of the questions in .3 is “no,” the written advice is a covered opinion. In this case, does your advice comply with the covered opinion rules under §10.35 of Circular 230 (see Section 400)?  

.5) If your answer to all of the questions in .3 is “yes,” does your advice comply with the standards for other written tax advice under §10.37 of Circular 230 (see Section 500)?  

If your answer to the question in .5 is “no,” your advice does not comply with the standards under Circular 230.

205) Conditions of Confidentiality

.1) Are you restricting one or more recipients of your tax advice from disclosing the tax treatment or
tax structure of the transaction described in your tax advice? (Note: You can claim that a transaction is proprietary or exclusive as long as you confirm to all of the recipients of your tax advice that they are permitted to disclose the tax treatment or tax structure of the transaction described in your tax advice.)

If your answer to the question in .1 is “no,” proceed to Section 206.

.2) If your answer to .1 is “yes,” does the limitation on disclosure protect your tax strategies? (Note: It is irrelevant whether the limitation on disclosure is legally binding.)

If your answer to the question in .2 is “no,” proceed to Section 206.

.3) If your answer to both of the questions in .1 and .2 is “yes,” the written advice is a covered opinion. In this case, does your advice comply with the covered opinion rules under §10.35 of Circular 230 (see Section 400)?

If your answer to the question in .3 is “no,” your advice fails to meet the standards for written tax advice under Circular 230.

206) Contractual Protection

.1) Have you given the taxpayer the right to receive a full or partial refund of your fees, or the fees of someone who is a member of, associated with, or employed by your firm, if all or part of the intended tax consequences from the matters addressed in your written tax advice are not sustained?

If your answer to the question in .1 is “yes,” proceed to Section 206.3. If your answer to the question in .1 is “no,” proceed to part .2.

.2) Are your fees, or the fees of someone who is a member of, associated with, or employed by your firm contingent on the taxpayer’s realization of benefits from the transaction described in your written tax advice?

.a) If your answer to the question in .2 is “yes,” proceed to part .3. If your answer to the question in .2 is “no,” your advice is not a covered opinion, but have you complied with the standards for other written tax advice under §10.37 of Circular 230 (see Section 500)?
CHECKLIST FOR PROVIDING WRITTEN TAX ADVICE UNDER CIRCULAR 230

OTHER RELEVANT FACTS

If your answer to the question in .a is “no,” your advice fails to meet the standards under Circular 230.

.3) If your answer to the question in .1 or .2 is “yes,” the written advice is a covered opinion. In this case, does your advice comply with the covered opinion rules under §10.35 of Circular 230 (see Section 400)?

If your answer to the question in .3 is “no,” your advice fails to meet the standards for written tax advice under Circular 230.

300) PROMINENTLY DISCLOSED

301) Is your disclosure set forth in a separate section, and not in a footnote?

302) Is your disclosure displayed in a typeface that is at least the same size or larger than the typeface of your disclosure of the facts or the law in your advice?

303) If your answers to the questions in both 301 and 302 are “yes,” is there any other reason that your disclosure might not be treated as prominently disclosed (e.g., because of the sophistication of the taxpayer or the length of the written advice)?

If your answer to any of the questions in 301, 302, or 303 is “no,” you have failed the requirement that your disclosure must be prominently disclosed in your opinion, and you have failed the standards for written tax advice under Circular 230.

400) REQUIREMENTS FOR COVERED OPINIONS

401) Factual Matters

.1) Have you used reasonable efforts to identify and ascertain all of the relevant facts? (Note: The facts may be related to future events if the transaction is prospective or proposed.)

If your answer to the question in .1 is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

.2) Does your written advice identify and consider all of the relevant facts?

If your answer to the question in .2 is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

.3) Prohibition against incorrect or incomplete factual assumptions
### CHECKLIST FOR PROVIDING WRITTEN TAX ADVICE UNDER CIRCULAR 230

<table>
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<tr>
<th></th>
<th></th>
<th></th>
<th>COMMENTS OR EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>.a) Have you assumed that a transaction has a business purpose?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
<tr>
<td>.b) Have you assumed that the transaction will be potentially profitable apart from the tax benefit(s) it will produce?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
<tr>
<td>.c) Have you relied on a projection, financial forecast, or appraisal that you know is incorrect or incomplete?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
<tr>
<td>.d) Have you relied on a projection, forecast or appraisal prepared by someone who lacked the skills necessary to prepare such projection, forecast or appraisal?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
<tr>
<td>.e) Is there any other reason you should know that a factual assumption is incorrect or incomplete?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
</tbody>
</table>

If your answer to any of the questions in .3 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### .4) Prohibition against unreasonable representations, statements or findings of the taxpayer or another person

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th>COMMENTS OR EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>.a) Have you based your opinion on factual representations made by the taxpayer or another person that you know or have reason to know are incorrect or incomplete?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
<tr>
<td>.b) Have you relied on a representation that a transaction has a business purpose without having a specific description of the business purpose?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
</tbody>
</table>

If your answer to either of the questions in .4 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### .5) Have you identified in a separate section of your opinion all of the factual representations, statements or findings of the taxpayer or another person that you relied on when writing your opinion?

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<th>COMMENTS OR EXPLANATION</th>
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<tr>
<td></td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
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</table>

If your answer to the question in .5 is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### 402) Relating the law to the facts

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<th>COMMENTS OR EXPLANATION</th>
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</thead>
<tbody>
<tr>
<td>.1) Does your written advice relate the applicable</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
</tbody>
</table>
## Checklist for Providing Written Tax Advice Under Circular 230

<table>
<thead>
<tr>
<th>Comments or Explanation</th>
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### .1) Have you assumed the favorable resolution of any significant Federal tax issue?  
If your answer to the question in .1 is “no,” proceed to the question in 402.3.  
If your answer to the question in .1 is “yes:”  
.a) Is your opinion a limited scope opinion (within the meaning of Section 407)?  
.b) Is your assumption based on permitted reliance on the opinion of another (see Section 404, below)?  
   If your answer to the question in .2 is “yes,” and your answer to both of the questions in .a and .b is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### .2) Have you otherwise based your opinion on any unreasonable legal assumptions, representations, or conclusions?  
If your answer to the question in .4 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### .3) Does your written advice contain internally inconsistent legal analysis or conclusions?  
If your answer to the question in .3 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### .4) Have you otherwise based your opinion on any unreasonable legal assumptions, representations, or conclusions?  
If your answer to the question in .4 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

### 403) Evaluation of significant Federal tax issues

#### .1) Does your opinion consider all significant Federal tax issues (for example, income, gift and estate, excise, and employment tax issues), within the meaning of 102.2, above?  
If your answer to the question in .1 is “yes,” proceed to the question in 403.2.  
.a) Is your opinion a limited scope opinion
**CHECKLIST FOR PROVIDING WRITTEN TAX ADVICE UNDER CIRCULAR 230**

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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(within the meaning of Section 407, below)?

<table>
<thead>
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<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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If your answer to the question in .a is “yes,” proceed to Section 407.

.b) Is your omission because of your permitted reliance on the opinion of another (see Section 404, below)?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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<tr>
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If your answer to the question in .1 is “no,” and your answer to both of the questions in .a and .b is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

If your answer to the question in .b is “yes,” proceed to part .2.

2) In evaluating the significant Federal tax issues, have you taken into account the possibility that:

.a) The IRS will not audit a tax return?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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<tbody>
<tr>
<td>___</td>
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</table>

.b) The IRS will not raise an issue on audit?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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<tbody>
<tr>
<td>___</td>
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</table>

.c) The taxpayer will resolve an issue through settlement if raised?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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</table>

If your answer to any of the questions in .a, .b, or .c of.2 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

3) Conclusion on each significant Federal tax issue

.a) Does your opinion provide a conclusion as to the likelihood that the taxpayer will prevail on the merits with respect to each significant Federal tax issue considered in the opinion?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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<tr>
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</table>

.b) If you are unable to reach a conclusion on one or more significant Federal tax issues, does your opinion state that you were unable to reach a conclusion with respect to those issues?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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<tbody>
<tr>
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</table>

If your answer to either of the questions in .a or .b of .3 is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

4) Reason(s) for the conclusion(s)

.a) Does your opinion describe the reason(s) for your conclusion(s), including the facts and analysis supporting the conclusion(s)?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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<tr>
<td>___</td>
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</table>

.b) If you were unable to reach a conclusion on
one or more issues, does your opinion describe the reasons why you were unable to reach a conclusion?

If your answer to either of the questions in .a or .b of .4 is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

.5) If you failed to reach a conclusion at a confidence level of at least more likely than not with respect to one or more significant Federal tax issues considered in the opinion, does your opinion prominently disclose:

.a) That the opinion does not reach a conclusion at a confidence level of at least more likely than not with respect to one or more significant Federal tax issues?

If your answer to the question in .a is “yes,” proceed to Section 404. If your answer to the question in .a is “no,” proceed to .b.

.b) With respect to those significant Federal tax issues, that the opinion was not written, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer?

If your answer to either of the questions in .a or .b of .5 is “no,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

.6) Marketed opinions

.a) If your opinion is a marketed opinion, does your opinion reach a conclusion that more likely than not, the taxpayer will prevail on each significant Federal tax issue addressed in the opinion based on its merits?

If your answer to the question in .a is “yes,” proceed to Section 404. If your answer to the question in .a is “no,” proceed to .b.

.b) If you are unable to reach a more likely than not conclusion with respect to each significant Federal tax issue and your opinion would otherwise be considered a marketed opinion, does your opinion contain the appropriate “opt out language” discussed in section 204.3, above?

If your answer to the question in .b is “no,” your advice fails to satisfy the requirements for a covered opinion under §10.35 of Circular 230.
<table>
<thead>
<tr>
<th>404) Reliance on the opinion of another</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>.1) Are you relying on the opinion of another in rendering your written tax advice?</td>
<td></td>
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<tr>
<td>If your answer to the question in .1 is “no,” proceed to Section 405.</td>
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<tr>
<td>.2) If your answer to the question in .1 is “yes,” do you know or have reason to know that the opinion of the other practitioner should not be relied upon (e.g., do you know that the other practitioner lacks the necessary skills to render the opinion)?</td>
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<tr>
<td>If your answer to the question in .2 is “no,” you may rely on the other practitioner’s opinion.</td>
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<tr>
<td>.3) If you are relying on the opinion of another, does your opinion identify the other opinion and set forth the conclusions reached in the other opinion?</td>
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<tr>
<td>If your answer to the question in .3 is “no,” you have not properly relied on the opinion of another and your tax advice will likely not satisfy the requirements for a covered opinion under §10.35 of Circular 230.</td>
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<thead>
<tr>
<th>405) Opinion provides an overall conclusion</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>.1) Does your opinion state your overall conclusion as to the likelihood that the Federal tax treatment of the transaction or matter that is the subject of the opinion is the proper treatment?</td>
<td></td>
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<td>________________________</td>
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<tr>
<td>.2) Does your opinion state your reasons for your overall conclusion?</td>
<td></td>
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<td>________________________</td>
</tr>
<tr>
<td>.3) If you are unable to reach an overall conclusion, does your opinion state that you are unable to reach an overall conclusion?</td>
<td></td>
<td></td>
<td></td>
<td>________________________</td>
</tr>
<tr>
<td>.4) If you are unable to reach an overall conclusion, does your opinion give the reasons why you are unable to reach an overall conclusion?</td>
<td></td>
<td></td>
<td></td>
<td>________________________</td>
</tr>
<tr>
<td>If your answer to any of the questions in .1, .2, .3, or .4 is “no,” your advice fails to satisfy the requirements for a covered opinion under §10.35 of Circular 230.</td>
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<thead>
<tr>
<th>406) Disclosure of referral or fee-sharing relationships</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you have a referral or fee-sharing arrangement with another person, does your opinion prominently disclose the existence of:</td>
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<td>________________________</td>
</tr>
<tr>
<td>.1) Any compensation arrangement, such as a referral fee or a fee-sharing arrangement, between you, your firm, or any person who is a member of,</td>
<td></td>
<td></td>
<td></td>
<td>________________________</td>
</tr>
<tr>
<td><strong>CHECKLIST FOR PROVIDING WRITTEN TAX ADVICE UNDER CIRCULAR 230</strong></td>
<td><strong>YES</strong></td>
<td><strong>NO</strong></td>
<td><strong>N/A</strong></td>
<td><strong>EXPLANATION</strong></td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
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associated with, or employed by your firm, and any person (other than the client for whom the opinion is prepared) with respect to promoting, marketing, or recommending the entity, plan, or arrangement (or a substantially similar arrangement) that is the subject of the opinion?

| .2) Any referral agreement between you, your firm, or any person who is a member of, associated with, or employed by your firm, and a person (other than the client for whom the opinion is prepared) engaged in promoting, marketing, or recommending the entity, plan arrangement (or a substantially similar arrangement) that is the subject of the opinion? |
|---------------------------------------------------------------|--------|--------|--------|----------------|

If your answer to either of the questions in .1 or .2 is “no,” your advice fails to satisfy the requirements for a covered opinion under §10.35 of Circular 230.

407) **Limited scope opinions**

.1) If your opinion considers less than all of the significant Federal tax issues, have you and the taxpayer agreed on the scope of the opinion and that the taxpayer may only rely on the opinion for purposes of avoiding penalties for the Federal issues addressed in the opinion?

| .a) If your answer to the question in .1 is “no,” your advice does not qualify for the limited scope exception to the covered opinion requirements. In this case, does your advice comply with the covered opinion rules under opinion under §10.35 of Circular 230 provided above? |
|---------------------------------------------------------------|--------|--------|--------|----------------|

.b) If your answer to the question in .a is “no,” your advice fails to meet the standards for written tax advice under Circular 230.

.2) Does your written advice relate to:

| .a) A listed transaction (as defined under Reg. §1.6011-4(b)(2))? |
|---------------------------------------------------------------|--------|--------|--------|----------------|

| .b) A principal purpose transaction (see section 202)? |
|---------------------------------------------------------------|--------|--------|--------|----------------|

| .c) A marketed opinion? |
|---------------------------------------------------------------|--------|--------|--------|----------------|

.i) If your answer to any of the questions in .a, .b or .c is “yes,” the opinion does not qualify for the limited scope opinion exception to the covered opinion requirements. In this case, does your advice comply with the covered opinion rules under §10.35 of
<table>
<thead>
<tr>
<th>COMMENTS OR EXPLANATION</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circular 230 provided above?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>.ii.) If your answer to the question in .i is “no,” your advice fails to meet the standards for written tax advice under Circular 230.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>3) If you are providing a limited scope opinion, does your opinion disclose that:</td>
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<td></td>
</tr>
<tr>
<td>.a) Your opinion is limited to the one or more Federal tax issues addressed in the opinion;</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>.b) Additional issues may exist that could affect the Federal tax treatment of the transaction or matter that is the subject of the opinion and the opinion does not consider or provide a conclusion with respect to any additional issues; and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>.c) With respect to any significant Federal tax issues outside the scope of the opinion, the opinion was not written, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer?</td>
<td></td>
<td></td>
<td></td>
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<td>.i.) If your answer to any of the questions in .a, .b or .c is “no,” the opinion does not qualify for the limited scope opinion exception to the covered opinion requirements. In this case, does your advice comply with the covered opinion rules under §10.35 of Circular 230 provided above?</td>
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<td>.ii.) If your answer to the question in .i is “no,” your advice fails to meet the standards for written tax advice under Circular 230.</td>
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<td>408) Have you provided advice (either oral or written) that is inconsistent with any of the required disclosures for a covered opinion?</td>
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<td>If your answer to the question in 408 is “yes,” your advice has failed to satisfy the requirements for a covered opinion under §10.35 of Circular 230.</td>
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<td>500) REQUIREMENTS FOR OTHER WRITTEN TAX ADVICE UNDER §10.37 OF CIRCULAR 230</td>
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<td>501) If you are giving written tax advice (including electronic communications) concerning one or more Federal tax issues:</td>
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<td>.1) Are you basing the written advice on unreasonable factual or legal assumptions (including</td>
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assumptions as to future events)?

If your answer to the question in .1 is “yes,” your advice does not satisfy the standards for other written tax advice under §10.37 of Circular 230.

.2) Are you unreasonably relying upon representations, statements, findings or agreements of the taxpayer or any other person?

If your answer to the question in .2 is “yes,” your advice does not satisfy the standards for other written tax advice under §10.37 of Circular 230.

.3) Have you considered all relevant facts that you know of or should know of in providing the advice?

If your answer to the question in .3 is “no,” your advice does not satisfy the standards for other written tax advice under §10.37 of Circular 230.

.4) In evaluating a Federal tax issue:

.a) Have you taken into account the possibility that the IRS will not audit a tax return?

.b) That the IRS will not raise an issue on audit?

.c) That the taxpayer will resolve an issue through settlement if the issue is raised by the IRS?

If your answer to any of the questions .a, .b, or .c of .4 is “yes,” you do not satisfy the requirements for other written tax advice under §10.37 of Circular 230.

600) BEST PRACTICES FOR TAX ADVISERS UNDER §10.33 OF CIRCULAR 230

601) Have you communicated with the client regarding the terms of the engagement?

NOTE: You should determine your client’s expected purpose for and use of the advice, and you should have a clear understanding with the client regarding the form and scope of the advice or assistance you are going to render.

602) Have you established the facts, determined which facts are relevant, evaluated the reasonableness of any assumptions or representations, related the applicable law (including potentially applicable judicial documents) to the relevant facts, and arrived at a conclusion supported by the law and the facts?

603) Have you advised the client regarding the importance of the conclusions reached in your advice, including
whether the taxpayer may avoid accuracy-related penalties through disclosure?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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If your answer to any of the questions in 601, 602, or 603 is “no,” you have not satisfied the standards for establishing best practices among tax advisers under §10.33 of Circular 230.

(Note: These standards are aspirational. The IRS currently will not impose penalties or sanctions for failure to comply with the standards for best practices. The AICPA is recommending that practitioners follow these standards, however.)

604) Have you acted fairly and with integrity in your practice before the IRS?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
<th>COMMENTS OR EXPLANATION</th>
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(Note: Although this provision is included in the standards for best practices for tax advisers, a practitioner is required to act with fairness and integrity in his/her practice before the IRS under other sections of Circular 230. Therefore, this provision is not purely aspirational.)