

# Ask Me Anything: Q&A Time and Best Practices in Minimizing Legal Exposure in Client Engagements and Vendor Agreements

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## Minimizing Legal Exposure in Client Engagements

- 1) How long is a CPA on the hook for professional negligence?**
- 2) Best Practices on Engagement Letters**
- 3) Interesting intersection of CPAs and the Law.**



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## Statute of Repose

1. What is a statute of repose? It is similar, but different than a statute of limitations.
2. For professional negligence claims, the statute of repose begins running at "the last act of the defendant giving rise to the cause of action." N.C.G.S. § 1-15(c)
3. Statute of Repose for CPAs is four years, but the question is, what is the last act the CPA performed the client?



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## How Long Do You Have a Duty?

1. In one 2018 case, even though a CPA was fired, he continued to try and "help" his "former" client.
2. Because he continued those efforts, there was a factual question as to whether the CPA/Client relationship was ongoing.
3. Sometimes, it is okay to get fired. Head v. Gould Killian CPA Grp., P.A., 371 N.C. 2 (2018)



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## Legal Rule as to “last act”

1. “To determine when the last act occurred, we consider the contractual relationship between the parties and when the contracted-for services were completed.”
2. So even though the rule is fairly clear, and the statute of repose serves as a hard bar, there is still gray area as to the “last act.”
3. In the case we have been discussing, the CPA continued to communicate with the client and the IRS after being “fired” by the client, extending the statute of repose.



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## Engagement Letters: Best Practices

1. Who is the client? This may seem obvious, but sometimes individual clients turn into corporate clients. Make sure there is an engagement for each.
2. What is the scope of our engagement? Just a tax return or more complex accounting needs?
3. If you are there to clean up a mess, identify what the mess is.
4. Clearly identify your fees and how expenses are handled.



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## Engagement Letters Cont.

5. Clearly state payment terms and how often you bill.
6. Identify any dispute resolution provisions, including choice of venue.
7. If applicable, identify when the relationship will end in the letter.
8. Set forth the client's obligations, not just paying you.



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## CPAs and the Law

1. First Amendment law has been applied in the accounting context. The NC Court of Appeals addressed whether the State Board of Certified Public Account Examiners could regulate commercial speech.
2. The answer is yes. At issue was a regulation prohibiting a CPA firm from indicating that it had more than one member in the firm.
3. The United States Supreme Court defined commercial speech as an "expression related solely to the economic interests of the speaker and its audience."
4. *The government may ban forms of communication more likely to deceive the public than to inform it, or commercial speech related to illegal activity. If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech*



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## Non-Competes Amongst CPAs

- 1) Typically, non-competes are disfavored in law, and are strictly construed.
- 2) However, modified arrangements can be upheld.
- 3) Upheld: an accounting firm and a partner executed a written agreement that the withdrawing partner was required to pay the firm 50% of all fees earned from any client who was a client of the firm during the two years prior to the partner's departure, subject to certain limitations.



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## Non-Competes Cont.

- 4) Why was this type of arrangement okay?
- 5) Because it was not a restraint of trade. The departing CPA was still free to practice as a CPA.
- 6) The agreement only described the obligations between the parties as to the division of fees for former clients.



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## Contracting with Vendors (Recap from Last Year)

- **Don't go broke saving money.** A common mistake is to chase a solution that has a great price, but sometimes the vendor just isn't up to the task.
- **Termination.** Always think about the exit strategy. This is critically important and if termination is difficult or expensive, it leads to litigation.
- What is the term of the contract? Are you on the hook to pay even if you cancel the contract?
- Does the contract create an exclusive relationship?
- Indemnity – who pays for what when something goes wrong? Be on the lookout for “gross negligence”
- Limitation of liability?
- “That’s just our standard language” should set off alarm bells. The words of the contract will carry the day.
- When the contractual relationship is over, document it.



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## Ask a Lawyer!

- In the past, we have things from traffic tickets to the Second Amendment.



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## Bad News Must Travel Fast

- If you remember nothing else, remember that bad news must travel fast.
- A claim or lawsuit may be silly or frivolous, but failing to take it seriously could have dire consequences.
- Every email you send, assume a judge will read it.



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## Questions?



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