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Request for Records – A Guide **for CPA Firms**

ACCOUNTANTS



A CNA RISK CONTROL GUIDE **FOR CPA FIRMS**

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Executive Summary

CPA firms either maintain or have access to numerous types of client records and related working papers, which may constitute confidential business and tax records and / or trade secrets. Requests for access to copies of such records can arise from multiple sources, including successor CPAs, current and former clients, lawyers, civil and criminal investigators, regulators, lenders, adverse parties in litigation, dissident shareholders, and others.

The duty to respond to these requests is governed by professional standards, state board of accountancy regulations, state and federal law, and regulatory bodies. Before responding to these requests, CPA firms should consider all applicable professional standards, laws, rules, and regulations.

Responding to requests can be challenging, regardless of whether the client consents to the production. The CPA should consider the scope of any authorization provided by the client, the types of records requested, the time frames sought to produce the records, the format of the documents being requested, and the resources necessary to identify, retrieve, reproduce and submit copies of records.

Review the terms of the firm's professional liability insurance policy. Some policies provide related coverage applicable to the legal costs associated with responding to subpoenas requesting client records. A subpoena should promptly be reported to the claim department of the firm's professional liability insurance carrier, regardless of whether or not it was issued in connection with a lawsuit. If your professional liability policy covers responses to subpoenas, you will be appointed an attorney who will assist you with your response.

Upon becoming aware of actual or anticipated litigation related to a document request, consult promptly with the firm's professional liability insurance carrier prior to taking further action. In most situations, documents should not be produced without a valid subpoena.

This article should be used as a guideline by practitioners in determining an appropriate response to a record request. In no way should this article be misconstrued as providing legal advice to you or your firm in maintaining records and responding to subpoenas.

This guideline also highlights **Risk Management Tips**. These tips should be read and applied within the context of the guide, applying professional judgment in consultation with competent legal counsel.

Risk Management Tips:

- When a request for records is made, the CPA should determine whether the request is from a client or a third party.
- For requests made from clients, whether current or former, CPAs should require the client to provide the request in writing for documentation purposes.
- For requests from third parties, CPAs should notify the client, in writing, of the request, provide the client with a copy of the request, and determine whether the client has an objection to the production. Generally, the CPA must honor the instructions of the client in responding to the document request. Laws and regulations may require the production of documents to a third party despite client objections.
- All subpoenas or summons should be immediately reported to the firm's professional liability insurer, and should be responded to only by legal counsel retained to represent the interests of the firm.
- Although the partner, principal or manager responsible for the client needs to be involved in preparing the production, CPA firms should consider designating a records custodian to coordinate responses to all such requests. Over time, a designated custodian could develop an understanding of the applicable professional standards, laws, rules, and regulations, ensure that all requests are documented in writing, and specify the documents needed.
- Expertise will be developed over time if the firm has a designated records custodian which will increase efficiency as well as minimize errors. Legal counsel should be consulted if the client indicates they will not consent to the production and the CPA believes the individual or entity making the request may be entitled to the information.
- Responses to requests to produce records are subject to time limitations governed by law, regulation, and professional standards. Establish a docketing system to monitor the timely response to requests, and train administrative and professional staff on the importance of identifying, maintaining and retrieving records requested by the firm records custodian in a timely manner.

1. The Basics

1.1. Key Definitions – Records and Working Papers

ET Section 501 of the AICPA Professional Code of Conduct defines the following key terms for records and working papers:

“Client-provided records are accounting or other records belonging to the client that were provided to the member, by or on behalf of the client, including hardcopy or electronic reproductions of such records.

Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client’s books and records or are otherwise not available to the client, with the result that the client’s financial information is incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that are proposed or prepared by the member as part of an engagement (for example, an audit).

Member’s work products are deliverables as set forth in the terms of the engagement, such as tax returns.

Member’s working papers are all other items prepared solely for purposes of the engagement and include items prepared by the

- member, such as audit programs, analytical review schedules, and statistical sampling results and analyses, and
- client, at the request of the member and reflecting testing or other work done by the member.”

Hereafter, for purposes of this guide, *client-provided records* will be referred to as *client records*.

1.2. Examples of Records and Working Papers

Common examples of the above definitions in practice include, but are not limited to, the following:

- **Client records:** Bank statements, W-2's, vendor invoices, and sale receipts;
- **Member-prepared records:** journal entries, general ledgers, adjusting entries, trial balances, and depreciation schedules;
- **Member's work products:** compilation reports, audit reports, tax returns, and management comment letters; and
- **Member's working papers:** audit program guides, memos documenting procedures performed and an analysis of sufficiency of audit evidence obtained over management's assertion, and client records with firm analysis to support tax return positions.

1.3. Key Definitions – Requesting Parties

Clients are generally individuals, members of management of an entity, partners in a partnership or LLC, trustees, etc. However, **clients** may not include individual shareholders, unit holders, trust beneficiaries, and spouses. *ET Section 501* of the *AICPA Professional Code of Conduct* defines the term client(s) to include current and former clients.

Third party is any individual or entity other than a client. **Third party** requests may come from parties such as mortgage brokers and lenders, attorneys, financial institutions, the IRS, state revenue departments, federal and state regulatory and enforcement agencies or corporate shareholders or partners who are not part of client management¹. Such requests generally arise from financial statement or tax return preparation services.

¹ See related article, *Third Party Verification Letters*, posted at www.cpai.com.

2. Professional Standards

2.1. Record Requests – ET Section 501 of the AICPA Professional Code of Conduct

Interpretation 501-1 of ET Section 501 provides guidance on how to respond to requests for records.

“Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member’s state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory body. For example, a member’s state board(s) of accountancy may not permit a member to withhold certain records notwithstanding fees due to the member for the work performed. Failure to comply with the more restrictive provisions contained in the rules and regulations of the applicable regulatory body concerning the return of certain records would constitute a violation of this interpretation.

Client-provided records in the member’s custody or control should be returned to the client at the client’s request.

Unless a member and the client have agreed to the contrary, when a client makes a request for **member-prepared records**, or a **member’s work products** that are in the custody or control of the member or the member’s firm (member) that have not previously been provided to the client, the member should respond to the client’s request as follows:

- **Member-prepared records** relating to a completed and issued work product should be provided to the client, except that such records may be withheld if there are fees due to the member for the specific work product.
- **Member’s work products** should be provided to the client, except that such work products may be withheld:
 - if there are fees due to the member for the specific work product;
 - if the work product is incomplete;
 - for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - if threatened or outstanding litigation exists concerning the engagement or member’s work.
- Once the member has complied with these requirements, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.
- **Member’s working papers** are the member’s property and need not be provided to the client under provisions of this interpretation; however, such requirements may be imposed by state and federal statutes and regulations, and contractual agreements.

In connection with any request for *client records*, *member-prepared records*, or a *member's work products*, the member may

- charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client,
- provide the requested records in any format usable by the client, and
- make and retain copies of any records returned or provided to the client.

The member is not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format. However, if the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to provide the client with formulas, unless the formulas support the client's underlying accounting or other records, or the member was engaged to provide such formulas as part of a completed work product.

Where a member is required to return or provide records to the client, the member should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made. The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation."

2.2. Confidentiality – ET Section 301 of the AICPA Professional Code of Conduct

A CPA is prohibited from disclosing confidential client information without the specific consent of the client. This confidentiality duty is embodied in the *AICPA Code of Professional Conduct*,² as well as in the rules and regulations of certain state boards of accountancy and regulatory and tax authorities.

2.3. Ownership

In general, a *member's working papers* are the property of the CPA firm. *Client records* and *member-prepared records* are the property of the client. A *member's work product* becomes the property of the client when the client accepts and pays for the work. Specifically, with respect to an audit engagement, AICPA professional standards indicate that "audit documentation is the property of the auditor, and some states recognize this right of ownership in their statutes..."³

² *Id.* at ET Section 301. Also see related Ethics Rulings on Responsibilities to Clients at ET Section 391 for discussion of how the rule should be construed and applied.

³ *Id.* at AU-C Section 230.A29, *Audit Documentation*.

3. Law, Rules, and Regulations

3.1. Federal and State Laws

3.1.1 Privacy, Confidentiality and Security

In considering requests to review or obtain copies of information contained in engagement files, CPAs need to be knowledgeable about the application of confidentiality, privacy, and security rules and laws that apply to their practice, as this may impact responses to such requests. For instance, with respect to implementation of the Gramm-Leach-Bliley Act, the FTC and the SEC promulgated rules that apply to CPA firms, their employees, and their subcontractors if they render tax services to individuals or serve as investment advisers or registered representatives of a broker / dealer.^{4,5}

Other federal agencies are responsible for the promulgation and enforcement of rules that apply to service providers to medical providers (HHS) and financial institutions (OCC, FDIC, OTS). Additionally, most states have passed consumer privacy laws affecting professional service firms, and others are considering doing so.⁶

Risk Management Tip:

As new rules and laws continue to evolve in the area of privacy, CPAs should consult with their legal counsel, state CPA society and the AICPA on a regular basis for current information on this subject.

3.1.2. Internal Revenue Code

The *Internal Revenue Code*, 26 U.S.C.A. § 7216, makes it a *misdemeanor* criminal offense for an accountant to knowingly or recklessly disclose to a non-client information furnished to him or her by a client to prepare federal tax returns or to use such information for any other purpose without the client's written consent. The offense is punishable by a fine of up to \$1,000 and / or not more than 1 year imprisonment. Exceptions to the rule are stated in §7216.

The consent to disclose federal tax information to a *third party* must be in writing (paper or electronic form) and must include required information and mandatory language driven by Treasury regulation. There are also requirements as to the size of paper and font for paper consents. For electronic consents, there must be sufficient contrast between text and background colors.

The Section 7216 Information Center, available at www.irs.gov, provides an overview of the requirement to obtain a client's consent, including aids to preparing consent forms. As guidance may change, firms should continue to monitor guidance from the IRS.⁷

Risk Management Tip:

Note that a subpoena to produce tax information does not relieve an accountant of his or her responsibilities under §7216. The firm should still immediately report the subpoena to its professional liability insurer. If the firm does not have professional liability insurance that would assist the firm in responding to the subpoena, the firm should retain legal counsel to assist with responding appropriately

4 The *Financial Services Regulatory Relief Act of 2006* contains a privacy notice exemption for accountants (Section 609, *Exemption From Disclosure Of Privacy Policy For Accountants*).

5 See related articles, *Privacy, Confidentiality, and Electronic Communications and A Possible Privacy Breach: What Next?* posted at www.cpai.com.

6 As of the publication date of this guide, federal legislation affecting consumer privacy was under consideration.

7 Visit the information center for more detailed guidance - <http://www.irs.gov/Tax-Professionals/Section-7216-Information-Center>.

3.2. State Board of Accountancy Rules and Regulations

As noted in *AICPA Professional Code of Conduct, ET Section 501, Interpretation 501-1* (see Section 2.1 *Record Requests* of this guide), firms should refer to state board of accountancy regulations regarding retention of **client records** as such regulations may differ from AICPA ethics standards. For example, California Board of Accountancy Code Section 68 states that “A licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client’s records shall not retain such records. Unpaid fees do not constitute justification for retention of **client records**.” Additionally, some states require written disclosures and permission from **clients** or prospective **clients**. For example, see California Board of Accountancy Business and Professional Code Section 5063.8.

4. Responding to Requests from Current Clients, Former Clients, and Third Parties

4.1. Requests from Current and Former Clients

CPAs may receive requests from *clients* for copies of various documents, including previously issued reports and tax returns. The guidance contained in *AICPA Professional Code of Conduct, ET Section 501, Interpretation 501-1* also applies to these requests. If the documents requested do not constitute *client records* or *member-prepared records* as described in the ethics interpretation, providing copies is at the discretion of the CPA firm. It is appropriate to charge for time and expenses incurred in responding to these requests and to require payment at the time of delivery of the copies.

- Copies of *member's working papers* – Any request from a client for copies of a *member's working papers* should be critically evaluated as to indicated need, planned use, and the extent of the request. If the *member's working papers* relate to an engagement that was not completed and no report was issued, CPAs generally should not provide copies. If the client questions the extent or quality of services performed, consult with your professional liability insurance carrier before proceeding.
- Copies of Previously Prepared Tax Returns – Although ET Section 501, Interpretation 501-1 does not require the CPA to provide tax returns if previously provided to the client, Treasury Department *Circular 230*, Section 10.28 states that “a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations.” This section goes on to define “records of the client” to include “any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the client to comply with his or her current Federal tax obligations.”

Risk Management Tip:

1. Upon receipt of a request for copies of engagement file documentation, it is critical to determine whether the request is coming from the client or a person within the authority to act on behalf of the client, or a third party, due to consent considerations.
2. Require the request to be made in writing for documentation purposes. Review the requested documents prior to providing copies to the *client* and determine the type of document, using the definitions established in *Section 1.1 Key Definitions – Records and Working Papers*. Determine which documents are required to be provided to the *client* based on the professional standards, laws, rules and regulations.
3. In the event incomplete information or work that should be completed or supplemented is discovered prior to providing copies, prepare separate documents dated and signed by the preparer, along with an explanation of why supplemental documents were prepared. These documents should be reviewed and approved by the engagement principal. If the working papers are in an electronic format, follow the instructions provided by the software developer in preparing these documents. Do not alter documents in the working papers file. Auditors should consult current standards and guidance contained in AU-C Section 230 *Audit Documentation*, as well as guidance issued by the Public Company Accounting Oversight Board (PCAOB) and the U.S. Government Accountability Office (GAO), as applicable.
4. Once all documents are sorted and copied, include a transmittal letter with the copies sent to the client that lists and describes each document, including a statement that the information is for the client's internal use only. An example of this type of letter is included in Appendix A. A recommended practice is to sequentially number each page in the production and / or keep a scanned copy of the production.
5. In the event additional related documentation is discovered following the firm's response to a document request or subpoena, immediately consult with the firm's legal counsel prior to taking further action. Do not discuss with the requesting party prior to consulting with counsel.

Risk Management Tip:

Original working papers or files should not be released. Duplication of electronic records should be performed by firm personnel, and copying of paper records should be performed under the firm's supervision and control.

4.2. Requests from Third Parties

CPAs may receive requests from *third parties* for access to or copies of working papers. There could be serious legal consequences in certain jurisdictions if the CPA firm permits *third party* access to documentation which includes the possible erosion of certain privity defenses that may have been available to defend the firm. Please consult with legal counsel prior to responding to any request by a third party to review copies of working papers. Privity, as defined at www.findlaw.com, is “the direct connection or relationship between parties to a contract or transaction”. Over time, case law and / or legislation have eroded this defense.⁸

Risk Management Tip:

In most circumstances, a CPA should not provide access to or copies of engagement files or working papers to *third parties*. Similar to client requests, all requests from third parties should be made in writing. Even if a *client* concurs with a *third party* request and provides written consent to the CPA, the firm should consider the reasons for the request and the legal liability implications of complying. Consider whether *Internal Revenue Code, 26 U.S.C.A. § 7216* governs the request. See further information in *Section 3.1.2 Internal Revenue Code* of this guide. Also consider applicable state board of accountancy rules. See further information in *Section 3.2 State Board of Accountancy Rules and Regulations*. For requests from third parties that can easily be provided by a client, it is recommended that the CPA provide the records to the client to them transmit to the third party.

⁸ For more information on the AICPA's position and advocacy actions related to Tort Reform – Privity of Contract, see the State Regulatory and Legislative Affairs area in the Advocacy section of the AICPA website at www.aicpa.org.

4.3. Requests from Regulatory Bodies, Administrative Agencies and Governmental Entities

4.3.1. Miscellaneous Regulatory Bodies and Administrative Agencies

In some circumstances, firms may be required by law, regulation, or contract to provide access to and copies of engagement files to a regulator or administrative agency. Normally, these parties have subpoena power and will request confidential client information by subpoena. A person or entity subject to investigation by a regulatory body or third parties with relevant documents can require that a subpoena be issued. When the third party has confidential information, a request for a supporting subpoena identifying exactly which documents are being requested is often advisable to document the request and the fact that the production is compelled. Professional liability insurance policies may provide related insurance coverage for responding to regulatory inquiries.

Risk Management Tip:

In such cases, timely report all regulatory inquiries to your professional liability carrier or legal counsel prior to responding to requests from a regulator. You may be advised to request the regulator or agency to issue a subpoena for the production of the records. With or without a subpoena, the CPA should still advise the client of the request and that the firm intends to comply with it absent an objection. The exception to this is in the event of a criminal matter. See further information in *Section 6.3.1 Subpoena and Administrative Summons* and *Section 6.3.2 Contacting Legal Counsel and Professional Liability Insurance Carrier*.

The firm should not agree to surrender original working papers to a regulator or administrative agency, and should maintain control over the working papers during the access / copying process to ensure confidentiality of client information and the continued integrity of the working papers.⁹

4.3.2. Requests from the IRS and State Revenue Departments

CPAs who practice before the IRS and state revenue departments should be familiar with their specific duties to provide information. Treasury Department Circular No. 230 states, “a practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged”.¹⁰ In addition, upon request, practitioners need to maintain and make available to the IRS copies of tax returns, refund claims, lists of taxpayers and taxpayer ID numbers for returns, and refund claims prepared.¹¹ Further, firms employing a tax return preparer must make available a list of such tax preparers as well as their identification numbers and place of work.¹²

⁹ *Id.* at AU-C Section 9230.02, *Audit Documentation: Auditing Interpretations of Section 230*.

¹⁰ Treasury Department Circular No. 230, Regulations Governing Practice before the Internal Revenue Service, Sec. 10.20.

¹¹ IRC Sec. 6107(b).

¹² IRC Sec. 6060(a).

5. Other Request Considerations

5.1. Marital Disputes

CPAs may receive requests for copies of individual tax returns and supporting information from *clients* who are separating or divorcing and have previously filed joint tax returns. Only one spouse may have furnished the information used to prepare the return, and the other spouse may request copies of previously prepared tax returns and related supporting documentation (i.e. joint bank statements, individual IRA account statements, etc.).

Risk Management Tip:

In preparing a joint return for a married couple, both individuals are considered *clients* of the firm and have equal right to the information supporting their filed joint return.¹³ However, if one spouse has an ownership interest in a business and the other spouse has no ownership in this business, records pertaining to the business should only be provided to the individual who has an ownership interest.

5.2. Business Owner Disputes

A similar issue arises when requests for *client records* and other information are made by individuals associated with a client who are embroiled in an internal company dispute. Firms may struggle in determining whether a request is truly coming from a *client* entitled to the documents or from a *third party*. In these disputes, demands for copies of records are often made by individuals having had little or no prior contact with the CPA firm. The obligation of the CPA in such situations is to respond to requests from the previously designated client representative. The CPA has an obligation to use reasonable care to obtain informed consent from an authorized representative of the client.¹⁴

Risk Management Tip:

If it cannot be readily determined whether the requesting party is authorized to receive copies of records on behalf of the client's business, it is recommended that the CPA consult with legal counsel prior to responding. Legal counsel will make a determination based upon the facts and circumstances.

¹³ *Id.* at ET Section 391.031-032, *Disclosure of Confidential Information*.

¹⁴ *Id.* at ET Section 591 – *Ethics Rulings on Other Responsibilities and Practices*, Ruling 189 *Requests for Records Pursuant to Interpretation 501-1*.

5.3. Requests from Clients with Outstanding Fees

Many firms receive requests from *clients* for reports, tax returns, and other documents prepared for a client for which the firm has not been paid. Some state boards of accountancy consider the withholding of *client records* a discreditable act, even if there are outstanding fees. Research the applicable state board of accountancy regulations in the jurisdictions of both the firm and the client prior to withholding records. Additionally, Treasury Circular 230, Section 10.28 generally requires the return of *client records* necessary for the client to comply with his or her Federal tax obligations, if there is a fee dispute and applicable state law allows or permits retention of the client's records, the practitioner is only required to provide the client with the records that must be attached to the taxpayer's return. In addition, the practitioner must provide the client with reasonable access to review and copy any additional records necessary for the client to comply with his or her Federal tax obligations.

Risk Management Tip:

If the firm is not obligated to release work product that a client has not paid for, it is appropriate to respond to such requests in a dated and signed letter or email explaining why the documents are not being released. Such documentation serves as critical evidence of the timing and explanation for withholding work product if the client later alleges they suffered damages as a result of not having access to the documents. If a client has paid for the services underlying the work product in question, but there are other fee disputes pending, the firm should consult check with its professional liability carrier on availability of pre-claim assistance or with legal counsel prior to responding to these types of requests.

6. Special Topics

6.1. Audit Engagements

6.1.1. Request to Furnish Previously Issued Audit Reports

Firms may receive requests from *clients* to furnish additional copies of previously issued audit reports, or may seek permission to provide report copies to *third parties*.

Risk Management Tip:

Firms receiving such requests for additional copies of reports should determine why the request is being made, who will receive the reports, and how the audit report will be used. If a firm complies with the request, a signed and dated transmittal letter should accompany additional copies of previously issued audit reports furnished to the *client*. The letter should indicate that the previously issued audit report was prepared solely for the use of the client and expected users known to the CPA firm at the time it was originally prepared, and should not be relied upon by any third parties.

6.1.2. Successor Auditor Requests

In connection with a company's change of auditors, a successor auditor makes a request to review the predecessor auditor's audit documentation. As indicated in the applicable AICPA professional standards, "it is customary in such circumstances for the predecessor auditor to make him or her available to the successor firm and make available for review certain of the working papers. The predecessor auditor should determine which working papers are to be made available for review and which may be copied... the extent, if any, to which a predecessor auditor permits access to the working papers is a matter of judgment."¹⁵

Risk Management Tip:

Before responding to any requests from the successor firm, the predecessor should obtain the written consent of the client before proceeding. In addition, although not required by the AICPA professional standards, it is recommended that the predecessor obtain an acknowledgement letter from the client documenting the scope and purpose of the successor's communications and working paper access. A sample of such a letter is included in AU-C Section 510 Exhibit B. Also, as indicated in the AICPA professional standards, the predecessor auditor should reach an understanding with the successor auditor as to the use of the working papers. Although not required, the practitioner should consider obtaining an acknowledgement letter from the successor auditor. A sample of such a letter is contained in AU-C Section 510 Exhibit C.

¹⁵ *Id.* at AU-C Section 510.A1-A9, *Opening Balances – Initial Audit Engagements, Including Reaudit Engagements*.

6.2. Other Requests for Access to Audit and Other Working Papers

Other requests for access to audit workpapers may arise in the event a *client* is considering selling its business. Another CPA firm may be engaged to perform due diligence services on the audited entity. Additionally, successor CPA firms may request copies of records in connection with bookkeeping, compilation, review, attest and tax return preparation engagements.

Risk Management Tip:

The above referenced AICPA professional standards apply to predecessor and successor firms in connection with an audit engagement. However, from a risk management perspective, this guidance should also be considered when requests are received from successor firms in connection with any other type of engagement.

6.3. Litigation – Record Retention

An overriding concern with respect to working papers and records is the need to preserve *all* client engagement records when the firm first learns that:

- A client, the firm, or a current or former employee of the firm is under civil, criminal, or regulatory investigation or expects to be investigated with respect to either client financial matters or services to the client, or
- The client or *third parties* inquire about services previously provided to the client, or allege directly or indirectly that the services rendered by the firm may have been incomplete or improper, or
- Litigation is pending or expected with respect to these matters, regardless of whether or not the CPA firm or its current or former employees are or are expected to be parties to such litigation.

6.3.1. Subpoena or Administrative Summons

CPAs also may receive a subpoena or summons to testify or produce working papers and other records. The subpoena or summons may relate to civil or criminal litigation involving a *client*, an inquiry or audit involving the IRS or a state department of revenue, a regulatory inquiry, or a lawsuit wherein the CPA firm is a party. Always notify your professional liability carrier if you receive a subpoena or summons to testify or to produce working papers and other records. The response to a subpoena or administrative summons varies depending upon its nature. Federal and state law provides individuals with certain rights to object to a civil litigation subpoena. For example, objections could be raised in a response to a request for documents in a civil litigation subpoena related to a divorce proceeding. On the other hand, a CPA must comply with the demands of an administrative subpoena. It is highly recommended that you consult with legal counsel to appropriately advise you on these issues.

6.3.2. Contacting Legal Counsel and Professional Liability Insurance Carrier

Upon receipt of a subpoena or summons to testify about client services or produce client engagement records, a CPA firm should *immediately* consult with its professional liability insurance carrier and legal counsel prior to responding to the request. Note that grand jury subpoenas are confidential, and the CPA firm may be prohibited from contacting the client under the terms of the subpoena.

Concurrent to notifying its professional liability insurance carrier and legal counsel, the firm should inform all firm professionals and administrative staff to preserve any and all documentation related to the subpoena subject.

CPAs that have rendered services to an attorney as a consulting or testifying expert in connection with anticipated or pending litigation who are subsequently subpoenaed as part of that litigation should consult with that attorney regarding their response. On the other hand, CPAs who receive a subpoena pertaining to this work following the settlement or final adjudication of the subject litigation should follow the above guidance and immediately consult with its professional liability carrier and legal counsel.

6.3.3. Time Limitations

Time limitations on responding to document requests are governed by professional standards, state board of accountancy regulations, and federal and state law and regulations. As noted earlier, *ET Section 501, Interpretation 501-1* of the AICPA Professional Standards indicates that client requests should be complied with (absent extenuating circumstances) no later than 45 days after the request is made. State board of accountancy regulations may be more restrictive. Deadlines for responses to administrative summons or subpoenas and civil or criminal subpoenas vary and typically have a response date attached to the documentation. Subpoenas may have a short timeframe for responding.

Untimely responses to record requests can result in disciplinary proceedings. With respect to summons or subpoenas, this also can jeopardize legal rights to object, file motions, or seek additional time to respond, and can result in the imposition of civil or criminal penalties. Untimely responses to document requests presented to a client which are forwarded to their CPA firm for response on their behalf could possibly jeopardize the rights of the client, resulting in damages to the client and exposure to civil and criminal penalties for both the client and the practitioner or CPA firm.

Risk Management Tip:

In the event of litigation, a subpoena, and / or administrative summons, all employees should *immediately* be advised to retain all firm records pertaining to the client, and to refer any requests for such records to firm management, regardless of the source of the request. Management should consult with its professional liability insurance carrier and legal counsel when preparing a response to such requests. Please note that it is imperative to respond in a timely fashion and if you have any questions please consult with your professional liability carrier and / or legal counsel.

Appendix A – Sample Transmittal Letter Accompanying Copies of Working Papers Furnished to a Client

ABC, CPAs
123 Any Street
Anytown, USA

June 1, 201X

XYZ Client
456 Any Street
Anytown, USA

Dear _____:

As you requested, I am enclosing the following copies from our engagement files for the (engagement description):

(Include description of each document including title, date, working paper index (if available), description of information presented and number of pages)

These copies are for your company's internal use only (describe the client's stated purpose or need for the working papers) and are not to be distributed or made available to any third-party. If these working papers become the subject of any subpoena, summons, or court order that you receive, you agree to notify us immediately before complying with such order.

Sincerely,

John Doe, CPA

Additional Resources

AICPA Resources available at www.aicpa.org:

1. Privacy / Data Protection Page
2. A Privacy Checklist for CPA Firms

CNA risk management articles available at www.cpai.com:

1. Professional Liability Issues in Practice Mergers and Dissolutions
2. Firm Ownership Change: Releasing Working Papers

Journal of Accountancy articles available at www.journalofaccountancy.com:

1. When parties come knocking for client records
2. The rules on providing client records

For more than 50 years, CNA has been serving accounting firms with solutions that help reduce the risks of managing their practice and insurance that helps cover a firm and its employees. With products and services designed for accountants by experienced professional risk consultants with practical experience in the profession, CNA insures more accountants than any other carrier. CNA's broad portfolio includes professional liability, general liability, cyber liability, property, employment practices liability, and our industry-leading P&C package for small firms. We are proud to be the endorsed professional liability insurance carrier for the American Institute of CPAs® member insurance program.

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333 S. Wabash Ave., 36S, Chicago, IL 60604

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