

Article 5.--CODE OF PROFESSIONAL CONDUCT

**Part I.--DEFINITIONS, INDEPENDENCE, INTEGRITY AND OBJECTIVITY, COMMISSIONS AND REFERRAL FEES, CONTINGENT FEES**

**74-5-2. Definitions.** Each of the following terms, wherever used in this article, shall have the meaning specified in this regulation:

- (a) "AICPA" means the American institute of certified public accountants.
- (b) "AICPA professional standards" means the standards, including definitions and interpretations, in "AICPA professional standards," volumes 1 and 2, published by the AICPA, as in effect on June 1, 2008, which are hereby adopted by reference, except for the following portions of volume 2:
  - (1) Pages 5301 through 6209, bylaws of the AICPA;
  - (2) pages 22,001 through 22,073, continuing professional education;
  - (3) pages 4451 through 4472, section 191 under rules 101 and 102;
  - (4) pages 4901 through 4917, section 591 under rules 501, 502, and 503;
  - (5) pages 4891 through 4892, section 505;
  - (6) pages 4691 through 4697, section 391 under rules 301 and 302;
  - (7) pages 4571 through 4581, sections 202 and 203; and
  - (8) pages 4601 through 4603, section 291 under rules 201, 202, and 203.
- (c) "Audit" means an independent examination of financial information or assertions of any entity, regardless of profit orientation, size, and legal form, if the examination is conducted to express an opinion thereon.
- (d) "Board" means the Kansas state board of accountancy.
- (e) "Certified public accountant" and "CPA" mean any of the following:
  - (1) A holder of a Kansas certificate;
  - (2) a person practicing certified public accountancy under the authorization to practice by notification as provided in K.S.A. 1-322 and amendments thereto; or
  - (3) a firm.
- (f) "Compilation" shall have the meaning specified in K.S.A. 1-321 and amendments thereto.
- (g) "Firm" shall have the meaning specified in K.S.A. 1-308 and amendments thereto.
- (h) "Generally accepted accounting principles" and "GAAP" mean the following standards, as applicable, in effect as specified and hereby adopted by reference:
  - (1) "Federal accounting standards," issued by the federal accounting standards advisory board as follows:
    - (A) "Statements of federal financial accounting concepts and standards," (SFFAS), including the appendices, as in effect on June 30, 2007;
    - (B) statement of federal financial accounting technical release 8, "clarification of standards relating to inter-entity costs," including the appendix, as in effect on February 20, 2008;
    - (C) statement of federal financial accounting technical release 9, "implementation guide for statement of federal financial accounting standards 29: heritage assets and stewardship land," including the appendices, dated February 20, 2008;
    - (D) statement of federal financial accounting concepts 5, "definitions of elements and basic recognition criteria for accrual-basis financial statements," including the appendices, dated December 26, 2007; and
  - (2) "current text," volumes I and II, except for pages iii through xii, issued by the financial accounting standards board, as in effect on June 1, 2008;
  - (3) "governmental accounting and financial reporting standards," except for pages vii through xv and appendices B and C, issued by the governmental accounting standards board, as in effect on June 30, 2008; and
  - (4) "international financial reporting standards (IFRSs®) 2008," issued by the international accounting standards board, as in effect on January 1, 2008.
- (i) "Government auditing standards" means the "government auditing standards," July 2007 revision, except for appendix II, which is hereby adopted by reference.
- (j) "Licensed municipal public accountant" and "LMPA" mean a holder of a permit issued under the laws of Kansas to practice as a municipal public accountant.
- (k) "Practice of certified public accountancy" means performing or offering to perform attest or nonattest services for the public while using the designation "certified public accountant" or "CPA" in conjunction with these services. "Attest" and "nonattest" services shall have the meaning specified in K.S.A. 1-321 and amendments thereto.
- (l) "PCAOB" means the public company accounting oversight board created by the Sarbanes-Oxley act of 2002.

(m) "Standards of the PCAOB" means the following standards as in effect on October 1, 2008, and related rules in "bylaws and rules of the public accounting oversight board" as in effect on October 1, 2008, which are hereby adopted by reference:

- (1) Auditing standards numbers 1, 3, 4, and 5; and
- (2) rules, section 3, "professional standards," part 1, "general requirements," and part 5, "ethics."

(n) "Staff accountant" means a certified public accountant who meets the following requirements:

- (1) Holds both a Kansas certificate and a Kansas permit;
- (2) is employed by a firm that is the certified public accountant's primary employer; and

(3) works at least 1,040 hours for the firm during a calendar year. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1974; amended May 1, 1978; amended May 1, 1979; amended May 1, 1985; amended July 22, 1991; amended July 13, 1992; amended April 5, 1993; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Jan. 8, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009.)

**Comment [a1]:** A new codified book dated August 6, 2007 is available on line and can be downloaded as a single file.

**74-5-2a. Definitions of terms in the AICPA professional standards.** The definitions of the terms in section 92 of the "AICPA professional standards," as adopted by reference in K.A.R. 74-5-2, shall be applicable wherever these terms are used in this article, including any document adopted by reference in this article. (Authorized by and implementing K.S.A. 1-202; effective May 29, 2009.)

**74-5-101. Independence.** (a) Each certified public accountant and each licensed municipal public accountant who performs professional services requiring independence shall comply with the following standards, as applicable:

(1) Rule 101 of the code of professional conduct, including the interpretations under rule 101, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2;

(2) chapter three of the government auditing standards adopted by reference in K.A.R. 74-5-2;

(3) regulation S-X codified at 17 C.F.R. Part 210, as in effect on September 18, 2007, which is hereby adopted by reference; and

(4) PCAOB rules, section 3, "professional standards," part 5, "ethics," as adopted by reference in K.A.R. 74-5-2.

(b) In determining whether a certified public accountant's or a licensed municipal public accountant's independence is impaired, any other circumstances, relationship, or activity that the board determines could impair independence may be considered by the board. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended Nov. 15, 2002; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009.)

**74-5-102. Integrity and objectivity.** (a) In the performance of professional services, each certified public accountant and each licensed municipal public accountant shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts to others or subordinate the accountant's or firm's judgment to another's judgment. In tax practice, any certified public accountant or licensed municipal public accountant may resolve doubt in favor of the client if there is reasonable support for that position.

(b) Each certified public accountant and each licensed municipal public accountant shall comply with the following applicable standards:

(1) Rule 102 of the code of professional conduct, including the interpretations under rule 102, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2, which shall be used in determining whether integrity and objectivity have been maintained;

(2) chapter three of the government auditing standards adopted by reference in K.A.R. 74-5-2; and

(3) PCAOB rules, section 3, "professional standards," part 5, "ethics," as adopted by reference in K.A.R. 74-5-2.

(Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended Nov. 15, 2002; amended May 27, 2005; amended May 19, 2006; amended May 29, 2009.)

**74-5-103. Commissions and referral fees.** Each certified public accountant shall comply with rule 503 of the code of professional conduct regarding commissions and referral fees, including the interpretations under rule 503, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended July 13, 1992; amended Jan. 12, 1996; amended Jan. 8, 1999; amended Sept. 10, 1999; amended May 27, 2005; amended May 29, 2009.)

**74-5-104. Contingent fees.** Each certified public accountant shall comply with rule 302 of the code of professional conduct regarding contingent fees, including the definitions and interpretations, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended July 13, 1992; amended Jan. 8, 1999; amended Sept. 10, 1999; amended May 27, 2005.)

**74-5-105.** Revoked February 16, 2007.

*Part II.—GENERAL STANDARDS, COMPLIANCE WITH STANDARDS, ACCOUNTING PRINCIPLES*

**74-5-201. General standards.** Each certified public accountant or licensed municipal public accountant shall comply with rule 201 of the code of professional conduct regarding general standards, including the interpretations under rule 201, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended May 27, 2005; amended Jan. 11, 2008; amended May 29, 2009.)

**74-5-202. Compliance with standards.** (a) Each certified public accountant who performs auditing, attestation, review, compilation, management consulting, tax, or other professional services shall comply with the applicable professional standards promulgated by the following entities, which are adopted by reference in K.A.R. 74-5-2 and this regulation:

- (1) The federal accounting standards advisory board;
- (2) the financial accounting standards board;
- (3) the governmental accounting standards board;
- (4) the AICPA accounting and review services committee;
- (5) the AICPA auditing standards board;
- (6) the AICPA management consulting services executive committee;
- (7) the AICPA tax executive committee;
- (8) the AICPA forensic and valuation services executive committee;
- (9) the AICPA professional ethics executive committee;
- (10) the PCAOB;
- (11) the international accounting standards board; and
- (12) the municipal accounting section of the division of accounts and reports, department of administration.

(b) Each licensed municipal public accountant shall comply with applicable, generally accepted auditing standards in the 2008 revised "Kansas municipal audit guide," including appendices A through L, prescribed by the municipal accounting section of the division of accounts and reports, department of administration, and hereby adopted by reference. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 22, 1989; amended Jan. 7, 1991; amended July 13, 1992; amended Aug. 23, 1993; amended Sept. 26, 1994; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009.)

**74-5-203. Accounting principles.** (a) A certified public accountant or a licensed municipal public accountant shall not express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles if the statements or data depart from generally accepted accounting principles and this departure has a material effect on the statements or data taken as a whole.

(b) A certified public accountant or a licensed municipal public accountant shall not state that the accountant or firm is not aware of any material modifications that should be made to financial statements or data in order for the statements or data to be in conformity with generally accepted accounting principles if the statements or data depart from generally accepted accounting principles and this departure has a material effect on the statements or data taken as a whole.

(c) Any certified public accountant or licensed municipal public accountant may express an opinion described in subsection (a) if the accountant demonstrates that, due to unusual circumstances, the financial statement would otherwise be misleading. In such a case, the accountant's report shall describe the following:

(1) The departure;  
(2) the approximate effects, if practicable; and  
(3) the reasons why compliance with the principle would result in a misleading statement. (Authorized by and implementing K.S.A. 1-202, and K.S.A. 75-1119; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 22, 1989; amended Jan. 7, 1991; amended July 13, 1992; amended Aug. 23, 1993; amended Sept. 26, 1994; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended May 27, 2005; amended May 19, 2006.)

**74-5-204.** (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; revoked January 11, 2008.)

**74-5-205.** (Authorized by and implementing K.S.A. 2000 Supp. 1-202, as amended by 2001 HB 2343, § 7; effective Nov. 17, 2000; amended Nov. 2, 2001; revoked May 27, 2005.)

### **Part III.--RESPONSIBILITIES TO CLIENTS**

**74-5-301. Confidential client information.** (a) A certified public accountant shall not disclose any confidential client information without the consent of the client.

(b) Rule 301 of the code of professional conduct, including the interpretations under rule 301 of the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2, shall be used by the board in determining compliance with subsection (a). (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 25, 1998; amended May 27, 2005; amended May 29, 2009.)

**74-5-302. Retention of client records.** Each certified public accountant shall comply with rule 501, including the interpretations under rule 501, as adopted by reference in K.A.R. 74-5-401. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended Nov. 2, 2001; amended Nov. 15, 2002; amended May 29, 2009.)

### **Part IV.--OTHER RESPONSIBILITIES AND PRACTICES**

**74-5-401. Acts discreditable.** (a) A certified public accountant shall not commit any act discreditable to the profession.

(b) Rule 501 of the code of professional conduct, including the terminology and interpretations under rule 501 of the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. Rule 501, including the interpretations, shall be used by the board in determining whether a certified public accountant has committed an act discreditable to the profession. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Nov. 15, 2002; amended May 27, 2005; amended May 29, 2009.)

**74-5-402. Acting through others.** A certified public accountant shall not permit others to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the certified public accountant, would place him or her in violation of the rules of conduct. (Authorized by K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978.)

**74-5-403. Advertising.** (a) A certified public accountant shall not advertise in a manner that is false, misleading, or deceptive.

(b) The use of any non-CPA's name or the name of any entity not registered with the board as a CPA firm in any advertisement or publication or under any heading used for certified public accountants shall be prohibited.

(c) Rule 502 of the code of professional conduct, including the interpretations under rule 502 as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2, shall be used by the board in determining whether a certified public accountant has violated subsection (a). (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended May 1, 1985; amended July 22, 1991; amended May 27, 2005; amended Feb. 16, 2007; amended May 29, 2009.)

**74-5-404a. Use of CPA designation while performing non-attest services.** (a) A person who has a Kansas permit to practice as a certified public accountant may use the "certified public accountant" or "CPA" designation when performing non-attest services in an organization that is not required to register as a firm.

(b) Non-attest services shall mean those services set forth in K.S.A. 1-321 and amendments thereto. (Authorized by and implementing K.S.A. 2000 Supp. 1-202, as amended by 2001 HB 2343, § 7; effective Jan. 8, 1999; amended Nov. 2, 2001.)

**74-5-405. Form of practice.** A certified public accountant may practice certified public accountancy, whether as an owner or an employee, in the form of a proprietorship, a partnership, a limited liability partnership, a professional corporation or association, a limited liability company, or a general corporation. (Authorized by K.S.A. 1999 Supp.1-202, as amended by L. 2000, Ch. 81, § 4; implementing K.S.A. 1999 Supp. 1-311, as amended by L. 2000, Ch. 81, § 13(a)(7); effective May 1, 1978; amended Aug. 23, 1993; amended Nov. 17, 2000.)

**74-5-405a. Certified public accountants who own a separate business.** Each certified public accountant in the practice of certified public accountancy who owns an interest in a separate business shall comply with interpretation 505-2 of the code of professional conduct, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2007 Supp. 1-311; effective Jan. 11, 2008; amended May 29, 2009.)

**74-5-406. Firm names.** (a) A certified public accountant shall not practice public accountancy under a firm name or advertise a firm name that includes descriptive words relating to the quality of services offered or that is misleading concerning the legal form or the persons who are partners, officers, members, managers, or shareholders of the firm.

(b) A firm name shall not be considered to be misleading solely because it contains words describing the geographical area in which the services are offered or words describing the type of services actually being performed by the certified public accountants who are owners, partners, officers, members, managers, or shareholders of the firm.

(c) A firm name or designation shall be considered to be misleading in any of the following instances:

(1) The name contains a misrepresentation of facts.

(2) The name is intended or is likely to create false or unjustified expectations of favorable results.

(3) The name implies education, professional attainment, or licensing recognition of its owners, partners, officers, members, managers, or shareholders that is not supported by facts.

(4) The name of a firm that is a Kansas professional corporation or association, limited liability company, limited liability partnership, or general corporation does not include its full legal name each time the firm name is used.

(5) The terms "& Company," "& Associate," or "Group" are used, but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff accountant holding both a Kansas certificate and a Kansas permit to practice.

(6) The plural term "& Associates" is used, but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least two other unnamed partners, shareholders, owners, members, or staff accountants holding both a Kansas certificate and a Kansas permit to practice.

(7) The name of the firm contains the name or names of one or more former partners, shareholders, or owners without their written consent.

(d) A fictitious firm name shall be defined as a name that does not contain the name or names of one or more present or former partners, members, or shareholders. A fictitious firm name may be used by a firm if the name is registered with the board and is not false or misleading as determined by the board.

(e) A fictitious firm name that uses the terms "& Company," "& Associate," or "Group" shall be considered misleading if the firm has only one partner, shareholder, owner, or member and no other partner, shareholder, owner, member, or staff accountant holding both a Kansas certificate and a Kansas permit to practice.

(f) A fictitious firm name that uses the term "& Associates" shall be considered misleading if the firm has only one partner, shareholder, owner, or member and only one or no other partner, shareholder, owner, member, or staff accountant holding both a Kansas certificate and a Kansas permit to practice.

(g) Each firm that falls out of compliance with this regulation due to any change in firm ownership or personnel shall notify the board within 30 days after the change. A reasonable period of time may be granted by the board for a firm to take corrective action.

(h) If a firm does not have an office in Kansas but is required to register as a firm with the board pursuant to K.S.A. 1-308(d) and amendments thereto, the name of that firm shall not be considered misleading even if the name

meets the criteria for being "misleading" as specified in paragraph (c) (5) or (6) or subsection (e) or (f) of this regulation. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2007 Supp. 1-308; effective May 1, 1978; amended Oct. 8, 1990; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 15, 2002; amended Jan. 11, 2008; amended May 29, 2009.)

**74-5-407. Cooperation with the board.** Each certified public accountant or licensed municipal public accountant shall cooperate in a timely manner with the board in its investigation of complaints or possible violations of the accounting statutes or the rules and regulations of the board. Cooperation shall include responding to written communications from the board sent by certified mail, return receipt requested, within 30 days of the date the communication was mailed or appearing before the board, or one or more of its members, upon request. (Authorized by and implementing K.S.A. 1997 Supp. 1-202 and K.S.A. 75-1119(a); effective May 1, 1978; amended May 1, 1979; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended Sept. 25, 1998.)

**74-5-408. Change of address.** Each certified public accountant shall notify the board in writing of any change in the person's home address, business name, or business address within 30 days of the change. (Authorized by and implementing K.S.A. 1-202; effective February 16, 2007.)