Hey! What's New? 2025-20

Retired Partners: A Liability Risk?

An article in the current issue of the *Journal of Accountancy*, written by Michael Reese, asks you to Imagine that today is the last day before one of your firm's partners heads off into retirement. "In this moment, it seems incomprehensible that this CPA, who has been essential to the firm for many years, won't have some role going forward. But what is that role? If not properly managed, how might that role undermine the firm's future?"

What, asks Reese, "do you do when several of the firm's clients still call and ask for this person by first name or meet them for lunch? What's your response when it comes out that the client entered into a transaction you advised against, and their response is, '[Former partner] said it was OK.'?"

The professional liability risks posed by retired partners are real and require planning and diplomacy, says Reese. "Unless the retiree has truly unplugged the ten-key for good, the firm may have to grapple with clients who still seek out that person for advice and, quite possibly, a bored individual who still has a strong desire to help both clients and staff. To help address this risk, CPAs need to understand a theory of liability known as *apparent authority.*

In general, apparent authority may be found where:

- It is objectively reasonable to believe that at the time of the advice, the adviser possessed authority that could be relied upon despite the adviser having no actual, recognized authority; and
- There is actual reliance on the adviser's statements.

If a retired partner advises firm clients, it may not be immediately obvious to those clients that the firm is not the source of the advice, Reese warns. "To the client, the retired partner and the firm are still linked, especially if interactions post-retirement bear strong similarities to interactions pre-retirement."

In isolation, he adds, "a client might incorrectly view the retired partner's advice as the firm's advice, and if the advice is bad, the client may sue the firm — not the retired partner. In a negligence claim, apparent authority may result in the *firm* being held liable if the average person could conclude that the retired partner *appeared* to be a legitimate voice of the firm. Liability may also result where the firm learns the retired partner communicates with clients but fails to remediate by saying the individual no longer speaks for the firm."

There is no bright-line indicator of apparent authority. Reese suggests that firms ask themselves two questions:

- "Should a client have any reason to question whether the firm is providing advice?"
- "Why are our clients talking to a retired partner (or vice versa)?"

Even when a firm proactively addresses the issue with its partners, there is always some lack of control over what a retired partner might say or do, he points out. "To help avoid the downside associated with this risk, a firm needs to position itself to compellingly show that when the advice was delivered, the retired partner did not have actual or apparent authority. A firm may also consider contractual loss mitigation terms for prohibited acts."

Reese advises that "CPA firms should have a process to formally transition clients in connection with a partner's retirement, and initiating this process should start well before the partner's last official day. It's disorienting for a client to abruptly learn that the person they routinely work with is imminently retiring or has already retired, and it may even prompt them to seek a different firm."

It's also essential to fully separate the partner from the firm. Despite emotional or financial attachments, a retired partner is in many ways no different than a former employee. Do not let retired partners:

- Share office space with firm personnel or keep their old office indefinitely;
- Attend firm meetings where firm management is prominent or decisions are made;
- Keep firm credit cards; or
- Stay on firm letterhead or in the "About Us" or "Contact Us" sections of the firm website.

When the partner finally does retire, Reese urges that their email address should be deactivated at a predetermined date. "Anyone who subsequently emails that address should receive an automated response that the person is no longer a member of the firm, along with an active phone number or email address for those seeking to contact the firm."

For more advice, have a look at Retired partners: A liability risk?.