

Ethics and Professional Responsibilities for Tax Advisers

We will answer the following questions during our class discussion of the topic of ethics and rules of practice for tax advisers/preparers. Please review them prior to class and be sure to read the sections that follow on this topic.

1. What guidance and rules should tax accountants be aware of with respect to ethical matters and procedures in doing tax work for clients?

2. The AICPA Code of Professional Conduct is the _____ behavior expected of a member of the AICPA.

- a. maximum
- b. minimum

3. May a AICPA member advertise in the newspaper that his practice concentrates in tax services (Rule 502)?

4. What is meant by the “principle” of “integrity” as used in the AICPA Code?

5. When an ethics interpretation or ruling is issued, how are members to know of its existence?

6. Mr. A, your client, wants to file his return on 4/15, but has not yet received a K-1 from a partnership in which he has a small interest. What should you do? Per what guidance? (see for example, SSTS #4 on Estimates).

7. What do the SSTS, Circular 230, and any other pertinent guidance tell you about procedures to take when you discover an error on a client's tax return?

8. Who is subject to Circular 230?

9. Could a CPA be "disbarred" from practice before the IRS for failure to file tax returns?

10. If the California State Board of Accountancy Rules and the AICPA Rules of Conduct are in conflict, such as with the rule on commissions and contingent fees, which rule should the CPA follow?

- a. California
- b. AICPA

11. Tax issues account for about _____% of all malpractice insurance claims. [<http://www.professional-liability.com/cpa.htm>]

12. IRC §6713 imposes a \$250 penalty per disclosure of information furnished to prepare a return or to use information other than to prepare a return (\$1,000 if willful; see §7216). There is an exception if the disclosure was compelled by court order. AICPA Code of Conduct Rule 301 also deals with treatment of confidential client information. General ethical principals should encourage tax practitioners to treat client tax and financial data in a confidential manner. What office procedures would you recommend to ensure confidentiality of client information?

13. Your client, Mr. and Mrs. Smith, have had Refi Co. send you a request to send a copy of their last tax return for purposes of the Smiths obtaining a home loan. They also want you to complete a sheet detailing wages and Schedule C income for the prior two years. What should you do?

14. Closely-held corporation C wants your accounting firm to prepare the corporate tax returns and those of the four equal individual shareholders. The shareholder/CFO requests that all charges be billed to C on one bill. What should you do? What are your concerns?

15. What do “more likely than not” and “substantial authority” mean? (See §1.6662-4(d))

16. Rank these standards with 1 being the highest:

- _____ Realistic possibility of success on the merits
- _____ More likely than not
- _____ Substantial authority

17. At what date should a preparer measure whether a position on a return has a realistic possibility of being sustained on its merits?

Additional information for preparers

- IRC §7701(a)(36) and §301.7701-15 define an income tax return preparer. Note that the definition is fairly broad. For example, depending on the dollar amount, a preparer of K-1s for a partnership could be viewed as the preparer of the returns of one or more partners, even though he or she did not prepare it (other than provide the K-1 information).
- IRC §6695 lists other penalties that a preparer could be subject to such as for failure to sign a return.

18. How can a client avoid a substantial understatement of tax penalty under §6662?
19. You do not have substantial authority to support a position taken on your client's return, but the potential tax liability involved is not "substantial," thus you have decided not to disclose it. Will this course of action also be enough to protect you against a preparer penalty?
20. Which of the following are considered to be "authority" for purposes of determining whether substantial authority exists?
- a. Tax Court Memorandum decision
 - b. private letter ruling issued to another taxpayer in 1980
 - c. proposed regulations
 - d. GCM issued in 1990
 - e. instructions to a tax form
 - f. the Blue Book
 - g. article in Taxation for Accountants

21. Is it possible to have substantial authority for a potential reasonable compensation issue, or is this impossible because it is a factual issue?

22. When might you have to refer your client to an attorney?

23. What should a tax practitioner do to better ensure against errors and potential malpractice claims?

24. In 1997, CPA prepared a memo addressing client's concern over whether a 1996 like-kind exchange had been properly performed and reported. In August 1998, the 1996 Form 1040 was selected for audit by the IRS. During the initial interview, the taxpayer mentions that he sought advice from a CPA in 1997 about the exchange. The Revenue Agent lists "memos and correspondence with CPA regarding 1996 exchange" on the IDR.

a. Is the memo privileged?¹

b. What if the communication was made in August 1998 and the CPA concluded that the exchange was improper under §1031 and advised the client to file an amended return and then there was an audit—would the amended return waive the privilege with respect to the memo? Could the work product doctrine protect the memo from disclosure?²

c. What if the communication was in December 1998 and involved a potential exchange for which the client wanted tax advice? Would a memo to the client be privileged?³ Should any particular designation be placed on the memo, such as "privileged and confidential tax advice under §7525"?⁴ Should any controls be placed on the file that includes the memo? Does it matter that the client undertakes the exchange and it is ultimately reported on the tax return?

25. ABC Corporation considered merging two of its subsidiaries, but expected that due to the loss that would be generated (and carried back), the plan would be challenged by the IRS. ABC is a large case taxpayer and the IRS has been auditing it for the past 30 years. ABC's VP of Taxes, an attorney, hired Pat, an accountant/attorney working for a Big 5 firm to prepare an analysis of the tax implications of the proposed restructuring. Pat's memo was over 50 pages long and analyzed the likely IRS challenges to the restructuring, and how ABC could respond. The VP expected from the start that ABC would end up in litigation with the IRS over the tax treatment of the restructuring. During the audit, the revenue agent requested to see Pat's memo.⁵

a. Does the regular attorney-client privilege apply?⁶

b. Does the §7525 privilege apply?⁷

c. Was the memo prepared under a *Kovel* arrangement?⁸

d. Does the work-product doctrine apply?⁹

26. Revenue Agent has requested the memos and workpapers prepared for Newco that explain the accounting method options for its new line of business. These items were prepared by Newco's outside CPA firm. Are these items protected under the §7525 privilege or the work product doctrine?¹⁰ Would your answer change if the workpapers had been reviewed by the Newco's President and/or by the CPA firm's audit staff?¹¹

27. Today, CPA received a phone call from a potential individual client seeking assistance on how to come clean with respect to a significant amount of unreported income received over the past two years.

a. Should the CPA refer the individual to an attorney? If yes, when?¹²

b. Would anything change if the call was on a cellular phone? a cordless phone? (see *U.S. v. Mathis*, 96 F.3d 1577 (11th Cir. 1996))¹³

c. Would anything change if the contact was via an e-mail message? a faxed message?¹⁴

Considerations:

- Illinois State Bar Association Opinion No. 96-10 on confidentiality with respect to electronic communications at <http://www.jmls.edu/cyber/docs/isba9610.html>. While not binding under §7525, the analysis in the Illinois opinion is interesting. The opinion holds that lawyers may use e-mail and the Internet without encryption to communicate with clients unless unusual circumstances require enhanced security measures (such as because you already know that break-ins have been attempted). The rationale is that the ability to intercept e-mail is about as difficult as intercepting a regular phone call. Also, intercepting e-mail is illegal under the Electronics Communications Privacy Act (Title 18, §2510). However, before communicating via e-mail with a client or potential client, consideration should be given to who else has access to the e-mail. For example, if the client is using the e-mail system at her job site and it is regularly reviewed by the systems administration staff, or it is shared e-mail, there is no expectation of privacy and thus, no intent that the communication was intended to be confidential. Guidance is needed on the application of the privilege to electronic communications.
- *Amylin Pharmaceuticals Inc. v. University of Minnesota*, 48 USPQ2d 1661 (SD Ca 1998)—Some of the documents that Amylin attempted to obtain from the University and for which they raised the protections of the attorney-client privilege or work product doctrine were e-mail. While the court noted that it is questionable whether there can be an anticipation of confidentiality in e-mail to enable them to be privileged, the court also acknowledged that this was just a recent issue for the public. Thus, the court assumed that the privilege could apply to emails. It noted that several courts had applied the privilege to e-mail messages. "See, e.g., *International Marine Carriers, Inc. v. United States*, 1997 WL 160371 *3 (S.D.N.Y. 1997) (finding that an exchange of email messages intended to obtain legal advice were protected by the attorney-client privilege); *National Employment Service Corp. v. Liberty Mutual Insurance Co.*, 1994 WL 878920 *3 (Mass. Super. 1994) (finding that thirty-two email communications were protected by the attorney-client privilege and therefore not discoverable)."

Preparer Penalties

References:

§6694
§6695
§6696
§6700
§6701
§6702
§6703
§6713

Additional Reading:

A preparer's duty to review documentation and ask questions is discussed in the case below. Rev. Proc. 80-40 and Rev. Rul. 80-265 cited in the case are reprinted following the excerpt from the case.

Brockhouse v US, 749 F.2d 1248; 84-2 USTC ¶10,005; 55 AFTR2d 445 (7th Cir.)

excerpt:

On appeal, the appellant argues that section 6694(a) does not apply to a tax return preparer's negligence in gathering facts from the taxpayer. He contends that section 6694(a) only applies where a preparer negligently misapplies a rule or regulation to a known item, and that where the preparer does not know of an item, he is not required to make inquiries or verify data. The appellant maintains that even if section 6694(a) does apply to a negligent failure to gather facts, his actions in this case were not negligent.

II

Section 6694(a) allows a penalty of \$100 to be assessed against an income tax return preparer whose negligent disregard of rules or regulations results in an understatement of tax liability. The preparer has the burden of proving the absence of negligence.

Section 6694 was one of several provisions added by the Tax Reform Act of 1976 to regulate income tax return preparers. Congress generally was concerned with deterring abusive practices by preparers. Prior to 1976, preparers were subject only to criminal penalties for willfully aiding or assisting in the preparation of a fraudulent return. Congress found that these criminal penalties were inadequate. ... Although Congress was concerned with abuses by "commercial" preparers -- those who are not accountants or lawyers -- it determined that regulation of all preparers was appropriate. ... Section 6694 was added primarily to deter preparers from engaging in negligent or fraudulent practices designed to understate tax liability. ... However, Congress did not limit the applicability of section 6694(a) to situations involving disregard of rules or regulations applicable to the facts as provided by the taxpayer. Rather, section 6694(a) applies generally to "negligent disregard." We therefore hold that a tax preparer negligently disregards a rule or regulation under section 6694(a) if his or her negligent failure to inquire into information provided by the taxpayer results in the filing of a return that violates a rule or regulation.

To determine whether a tax preparer's actions constitute negligence under section 6694(a), we must first determine the applicable standard of care. Negligence in this context is defined generally as a "lack of due care or failure to do what a reasonable and ordinarily prudent person would do under the circumstances." *Marcello v. Commissioner*, 380 F.2d 499, 506 (5th Cir. 1967), cert. denied, 389 U.S. 1044, 19 L. Ed. 2d 835, 88 S. Ct. 787 (1968); see also *Zmuda v. Commissioner*, 731 F.2d 1417, 1422

(9th Cir. 1984). The regulation under section 6694(b), relating to willful disregard of rules or regulations, expressly provides that a preparer may not rely without verification on information supplied by the taxpayer if that information appears incomplete or incorrect. Treas. Reg. §1.6694-1(b)(2)(ii). The regulation under section 6694(a) does not contain such an express provision, but it does provide that a preparer is not negligent if he or she "exercises due diligence in an effort to apply the rules and regulations to the information given" to him or her. Treas. Reg. §1.6694-1(a)(1). This due diligence requirement means that a preparer must act as a reasonable, prudent person with respect to the information supplied to the preparer. We hold that if the information supplied would lead a reasonable, prudent preparer to seek additional information, it is negligent not to do so. A reasonable, prudent preparer would inquire as to additional information where it is apparent that the information supplied was incorrect or incomplete and it is simple to collect the necessary additional information.

We find this standard of care to be consistent with the congressional purpose behind section 6694(a). Congress passed section 6694 as part of an attempt to curb abusive practices by preparers. For a preparer to ignore the implications of information furnished where the error is apparent and simple to correct would be an abusive practice. We note that the IRS has interpreted section 6694(a) to apply to situations where the preparer has reason to know that the information supplied is incomplete or incorrect. See Rev. Rul. 80-265, 1980-2 C.B. 378 (under section 6694(a), although the preparer is not required to audit information, "the preparer may not ignore the implications furnished to the preparer") (citing guidelines set forth in Rev. Proc. 80-40, 1980-2 C.B. 774-75).

Applying the standard care outlined above to the facts in this case, we agree with the district court that the appellant was negligent in failing to inquire whether any of the interest paid by the corporation had been paid to Dr. Busch. The error involved was relatively apparent. The appellant was aware that Dr. Busch had made loans to the corporation and that the corporation had made interest payments.⁵ This should have alerted him to the possibility that interest had been paid to Dr. Busch. The appellant also was aware that the Busches did not report any interest paid on the loans made to the corporation. This should have alerted him to the possibility that the information supplied to him was not complete. ... Moreover, the appellant could have discovered the error merely by asking the corporation or the Busches whether any of the interest paid by the corporation had been paid to the Busches or by requesting and examining the corporate ledger. A prudent preparer would have inquired about interest payments of the loans rather than ignoring the implications of the information furnished. Appellant's negligent failure to inquire led him to disregard the applicability of section 61, which provides that gross income includes interest income.⁷ Thus, appellant is liable under section 6694(a).

⁵ The appellant contends that there is no proof that he received the corporate trial balance sheet before he prepared the individual return. We do not regard the order in which he prepared the returns as significant. Even if he prepared the individual return first, the corporate trial balance sheet should have alerted him to the possibility of interest payments to Dr. Busch. At that time, he should have made the appropriate inquiries, recognizing that an amended individual return might be necessary.

⁷ The appellant argues that §7216, providing sanctions for unauthorized disclosure of information by tax return preparers, prohibited him from using information obtained from the corporate trial balance sheet in attempting to prepare the individual return. However, it appears that the regulations permit such disclosure. Treas. Reg. §301.7216-2.

Section 1. Purpose

The purpose of this revenue procedure is to provide guidelines for the application of the penalty under section 6694(a) of the Internal Revenue Code for the negligent disregard of rules and regulations by an income tax return preparer. The revenue procedure indicates some of the factors that will be taken into consideration in determining whether this penalty will be applied.

Sec. 2. Background

.01 Section 6694(a) of the Code provides that if any part of any understatement with respect to any return or claim for refund is due to the negligent or intentional disregard of rules and regulations by any person who is an income tax return preparer with respect to such return or claim, such person shall pay a penalty of \$100 with respect to such return or claim.

.02 Section 6694(e) of the Code provides that an “understatement of liability” means any understatement of the net amount payable with respect to any income tax.

.03 Section 1.6694-1(a)(1) of the Income Tax Regulations provides that a preparer is not considered to have negligently or intentionally disregarded a rule or regulation if the preparer exercises due diligence in an effort to apply the rules and regulations to the information given to the preparer to determine the taxpayer's correct liability for tax.

.04 Section 1.6694-1(a)(5) of the regulations provides that the preparer bears the burden of proof on the issue of whether the preparer has negligently or intentionally disregarded a rule or regulation.

.05 The Conference Report on the Revenue Act of 1978 relating to Technical Corrections to the Tax Reform Act of 1976, H.R. Rep. No. 95-1800, 95th Cong., 2d Sess. 284 (1978), 1978-3 C.B. (Vol. 1) 521, 618, states that the Service shall reasonably interpret section 6694(a) according to the standards of section 6653(a) and in light of all the facts and circumstances of each case taking into account any and all mitigating factors.

.06 The case of *Marcello v. Commissioner*, 380 F. 2d 499, 506 (5th Cir. 1967) holds that negligence is lack of due care or failure to do what a reasonable and ordinary prudent person would do under the circumstances.

Sec. 3. Scope

The scope of this revenue procedure is to provide guidelines for the application of the penalty under section 6694(a) of the Code for the negligent disregard of rules and regulations by an income tax return preparer. These guidelines do not apply to the penalty under section 6694(a) for the intentional disregard of rules and regulations by an income tax return preparer.

Sec. 4. Application

.01 In determining whether the penalty under section 6694(a) of the Code is to be asserted, all the relevant facts and circumstances of each case will be taken into account. In making this determination, the following factors will be taken into consideration.

1 *Nature of the Error Causing the Understatement.* Was the provision that was misapplied or not discovered so complex, uncommon, or highly technical that a competent preparer of returns of the type at issue might reasonably be unaware or mistaken as to its applicability? Should a general review of the return have disclosed the error to the preparer? For example, although an isolated mathematical or clerical error ordinarily reflects no more than mere inadvertence and thus will not result in the assertion

of the penalty, such an error may be of such a magnitude or be so conspicuous that it should have been discovered after its commission.

2 Frequency of Errors. Is the understatement the result of an isolated error or is it the result of a number of errors? Although an isolated error may result in the assertion of the penalty if sufficiently obvious, flagrant or material, the negligence penalty generally will not be asserted for an isolated error. On the other hand, a pattern of errors on a return is presumptive of negligence and generally will result in the assertion of the penalty even though no one error occurring in isolation would have triggered the penalty.

3 Materiality of Errors. Is the understatement material in relation to the correct tax liability? The negligence penalty generally will not be asserted if the understatement is of a relatively immaterial amount. Nevertheless, the understatement, even though immaterial in amount, may result in the assertion of the penalty if the error or errors creating the understatement are sufficiently obvious, flagrant or numerous. An error resulting in a material understatement may be a greater indication of negligence than a similar error resulting in a less material understatement.

.02 Where all the relevant facts and circumstances suggest that the return was negligently prepared, the penalty under section 6694(a) of the Code generally will not be asserted if (1) the preparer's normal office practice, when considered together with other facts and circumstances such as the knowledge of the preparer, indicates that the error in question would rarely occur and (2) the normal office practice was followed in preparing the return in question. Examples of normal office practice include a system to promote accuracy and consistency in the preparation of returns, such as a checklist, a method for obtaining the necessary information from the taxpayer, examining the prior year's return, and review procedures. The normal office practice of the preparer will not be relevant where the error is flagrant, or there is either a pattern of errors on a particular return or an error is repeated on numerous returns.

.03 The penalty under section 6694(a) of the Code generally will not apply where a preparer in good faith relies without verification upon information furnished by the taxpayer. Thus, the preparer is not required to audit, examine or review books and records, business operations, or documents or other evidence in order to verify independently the taxpayer's information. However, the preparer may not ignore the implications of information furnished to the preparer or which was actually known by the preparer. The preparer shall make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some sections of the Code require the existence of specific facts and circumstances, such as maintenance of specific documents, before a deduction may properly be claimed. The preparer shall make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulations as a condition to claiming a deduction.

Rev. Rul. 80-265, 1980-2 C.B. 377

ISSUE

Does the penalty for negligent disregard of rules and regulations under section 6694(a) of the Internal Revenue Code apply in the following situations?

FACTS

Situation 1

An income tax return preparer prepared both *A*'s individual federal income tax return for calendar year 1978 and the corporate income tax return of *X*, *A*'s wholly-owned corporation for its taxable year ended December 31, 1978. The preparer was not the auditor of *X* and had no knowledge whatsoever of any loans by *A* to *X*. The preparer deducted interest paid by *X* to *A* on the corporation's return filed March 15, 1979. However, the preparer did not report the interest as income on *A*'s individual return filed April 15, 1979. The information provided by *X* to the preparer did not indicate who received the interest payment and the information provided by *A* to the preparer did not indicate receipt of such payment. Upon examination the Internal Revenue Service determined that the failure to report the interest income resulted in an understatement of tax liability on *A*'s individual return.

Situation 2

The facts are the same as in situation 1 except that the information provided by *X* indicated *A* received the interest payment from *X*.

LAW AND ANALYSIS

Section 6694(a) of the Code provides that if any part of any understatement of liability with respect to any return is due to the negligent or intentional disregard of rules and regulations by any person who is an income tax return preparer with respect to such return, such person shall pay a penalty of \$100 with respect to such return.

Under section 61 of the Code interest received on loans are includable in gross income.

Rev. Proc. 80-40, page 774, this Bulletin, sets forth guidelines for the application of the penalty under section 6694(a) of the Code for the negligent disregard of rules and regulations by an income tax return preparer. The revenue procedure indicates that the penalty generally will not apply where a preparer in good faith relies without verification upon information furnished by the taxpayer, but the preparer may not ignore the implications of information furnished to the preparer or actually known to the preparer.

In situation 1, the preparer could rely upon the information furnished by *A* in connection with *A*'s individual return. The preparer was not required to examine or review *A*'s books and records and had no reason to believe that the information as furnished might be incorrect or incomplete.

In situation 2, the preparer, based on the information furnished by *X*, in connection with *X*'s corporate return, had reason to believe that the information furnished by *A* might be incorrect or incomplete. The preparer should have made inquiries to reconcile the information furnished by *X* with the omission by *A* of the interest income.

HOLDING

The penalty for negligent disregard of rules and regulations under section 6694(a) of the Code does not apply to the preparer in situation 1. The penalty does apply to the preparer in situation 2.

-
- ¹ No. IRC §7525 only applies to communications made on or after July 22, 1998.
- ² If the memo supports data reported on the amended return, the privilege is most likely waived. Consulting as to whether to file an amended return should fall under tax advice (see earlier reference to *Cote* and *Willis*). Given the lack of clarity in the law here, and the sometimes fine line between tax prep and tax advice, consideration should be given to drafting two memos—one with data to be reported on the amended return, and the other analyzing the tax law involved. The work product doctrine only applies if the documents were prepared in anticipation of litigation. See *Adlman*, *supra*.
- ³ Note: Reg. §1.7701-15(a)(2) defining a tax return preparer provides that a person who only gives advice on specific issues of law is generally, not considered a tax return preparer. Thus, arguably, advice prior to a transaction or filing of a return is not viewed as tax preparation (which is not privileged).
- ⁴ Yes, the notation should be made and the memo kept separate from tax preparation work.
- ⁵ See *U.S. v. Adlman*, 134 F.3d 1194, 98-1 USTC ¶50,230, 81 AFTR2d 98-820 (2d Cir. 1998) and *U.S. v. Adlman*, 68 F.3d 1495, 95-2 USTC ¶50,579, 76 AFTR2d 95-7188 (2d Cir. 1994).
- ⁶ No; the client did not go to the Big 5 firm for legal advice.
- ⁷ Arguably, yes because this appears to be tax advice. However, depending on the nature of the communications, all or part may be waived if the communication is disclosed on the tax return.
- ⁸ As held in the *Adlman* case, *supra*, the situation was not structured as one where the VP was providing legal advice for his employer and sought the services of a CPA under a *Kovel* arrangement. While this could have been done, the facts in *Adlman* indicated that the corporation hired the Big 5 firm for this engagement just like it did for all other engagements; the Big 5 practitioner was not hired by the VP. In footnote 1 to the *Adlman I* case, the court noted that it was not necessary to have a separate billing arrangement for this particular engagement. However, not having one made it more difficult for the client to prove that the privilege applied.
- ⁹ Yes, if the memo was prepared in anticipation of litigation. The court noted that even if there was a business reason for the memo, if it was also prepared in anticipation of litigation, it would be covered by the work product doctrine.
- ¹⁰ Arguably, privileged under §7525. See Internal Revenue Manual §4024.4 and §4024.5; *U.S. v. Arthur Young & Co.*, 465 U.S. 805, 84-1 USTC ¶9305, 53 AFTR2d 84-866 (1984); *U.S. v. El Paso Co.*, 682 F.2d 530, 82-2 USTC ¶9534, 50 AFTR2d 82-5530 (5th Cir.), cert denied 466 U.S. 944 (1984); *U.S. v. United Technologies Corp.*, 97-2 USTC ¶50,721, 80 AFTR2d 97-6614 (DC-CT 1997). Note that the *El Paso* case predates the *Arthur Young* case.
- ¹¹ Query—are these individuals within the "magic circle" or operating under a *Kovel* arrangement? Also consider the possibility of the accountant having to waive the client's privilege if something is found that requires disclosure in Newco's financial statements. The work product doctrine most likely does not apply the memos and workpapers were not prepared in anticipation of litigation.
- ¹² Arguably, it is too late to fully protect the client. This matter might turn into a criminal proceeding and the §7525 privilege would not attach to the communication the client already made to the CPA. The potential client should be referred to an attorney right away. If the attorney needs accounting work in order to provide legal advice, she should hire the CPA under a *Kovel* arrangement.
- ¹³ *Mathis* held that there is no expectation of privacy on a cordless phone. Thus, communications over the cordless phone likely won't be privileged. However, the existence of federal or state privacy protections (such as through criminal statutes for eavesdropping on phone conversations) may cause courts to view such conversations as taking place with an expectation of privacy. With respect to a cellular phone, verify what the expectation of privacy is before assuming that conversations are privileged. This is an area in need of further guidance.
- ¹⁴ Also see Colleen L. Rest, "Electronic Mail and Confidential Client Attorney Communications: Risk Management," *Case Western Reserve Law Review*, Winter 1998, page 309; William P. Matthews, "Encoded Confidences: Electronic Mail, the Internet, and the Attorney-Client Privilege," *Kansas Law Review*, November 1996, page 273; Lucy Schlauch Leonard, "The High-Tech Legal Practice: Attorney-Client Communications and the Internet," *University of Colorado Law Review*, Summer 1998, page 851; Harry M. Gruber, "E-Mail: The Attorney-Client Privilege Applied," *The George Washington Law Review*, March 1998, page 624; and Anne G. Bruckner-Harvey, "Inadvertent Disclosure in the Age of Fax Machines: Is the Cat Really Out of the Bag?" *Baylor Law Review*, Spring 1994, page 385.