

EYES ON THE COURTS

NASBA ANNUAL MEETING

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State Board of Accountancy Cases

Coughlin v. Bureau of Prof. & Occup. Affairs

- CPA license lapsed.
- 13 years later, convicted on four felony charges re used car business.
- Board revoked and imposed \$40,000 civil penalty.
- On review, challenged Board's jurisdiction and the civil penalty on top of revocation.
- Court upheld the Board action.

Beaulieu v. N.H. Board of Accountancy

- Firm failed to retain work papers and records for 5 years.
- Firm failed to properly conduct audit of nonprofit client.
- Board suspended Firm for 3 years and imposed \$5000 fine.
- On appeal, Firm argued that record retention rule only pertained to client's records.
- Court held that Firm had committed professional misconduct and that the 5-year retention requirement did not exceed Board's authority.

Brown v. State Board of Accountancy (MO)

- Brown failed to meet CPE requirements.
- Board placed license on probation for 3 years, required additional CPE and supplemental ethics course.
- Court of Appeals agreed that Brown had failed to prove CPE compliance.
- Based upon record including some evidence, which Brown had not offered at the Administrative Hearing, the Court also found that Brown had a series of personal tragedies and had contacted the Board about her situation, and that the Board had accepted her CPE hours, then later reversed its waiver without rationale.
- Court reversed and remanded for determination of an appropriate sanction.

Ramanan v. Cal. Bd. of Accountancy

- CBA disciplined Ramanan for dishonesty, lack of independence, negligence, inadequate audit documentation, and failure to register the firm name.
- After 23 days of hearing over a 9-month period, upon ALJ's recommendation, Board revoked individual and firm licenses.
- On appeal, Ramanan challenged the findings and conclusions regarding each cause for discipline.
- Court found that the ALJ's conclusion were "in large measure based upon significant deficiencies found in Accountants' work papers and other audit documentation."

South Carolina AG Opinion (Sept. 9, 2019)

- AG Office deferred to the Board's interpretation that SC licensee may not use CPA title to offer tax prep services via unlicensed firm.
- However, citing *Miller*, AG opined that Board needs to justify the restriction by showing that it is narrowly tailored to serve a "substantial state interest," and by showing "real harm" that the restriction alleviates.
- AG also suggested that the Board needs to address different treatment of affected licensees vs. unlicensed tax preparers and out-of-state CPAs with practice privileges.
- AG concluded: "... resolving this matter and stating conclusively that SC's regulatory scheme violates the 1st Amendment are factual determinations. As such, only a court, not this Office, can make such a determination."

Other Accountancy Regulation Related Cases of Interest

Del Norte Senior Center, Inc. v. Stelling

- Court declined to find that accounting firm was negligent per se despite expert testimony that firm violated Standards.
- Court opined that AICPA Standards “are by their nature so broad, aspirational and imprecise that a presumption of negligence should not arise from an expert’s testimony to their violation without more specificity.”
- “The losses that the Center suffered were not of the nature that the allegedly violated AICPA standard was designed to prevent...”
- State Board enforcement implications?

United States v. Iley

- Per consent with Colorado Board, Iley admitted negligent professional conduct and accepted \$10,000 fine and 5 years probation.
- Unknown to Board, Iley had used a fraudulent scheme to fleece clients for \$11 million.
- Iley subsequently pled guilty to wire fraud & false tax prep charges.
- Citing the prior Board consent, the Sentencing Court imposed longer sentence.
- Appeals Court upheld lower Court's use of violation of Board Order to compute longer sentence.

United States v. Sears

- FBI agent was a certificate holder, not a “fully licensed to practice CPA.”
- Sears pled guilty based upon evidence obtained using a search warrant in which agent used CPA title.
- Sears challenged his own guilty plea, claiming that the search warrant was granted in reliance upon the agent’s unauthorized use of the CPA title.
- Court upheld the search warrant and guilty plea, but declined to decide the “interesting question” of whether agent was “holding out as a CPA” on the warrant.

Almeida-Leon v. WM Capital Management

- Matter arose out of private litigation in U.S. District Court, Puerto Rico.
- CPA objected to a subpoena seeking his license records from the Puerto Rico Board of Accountancy.
- Licensee's status as a licensed CPA was not a private, privileged matter, but a matter of public concern and of public record.
- Reason for license suspension was properly discoverable because he testified about his status as a CPA in a confusing and contradictory manner.
- Court refused to quash the subpoena.

Chelsea Housing Authority v. McLaughlin

- Housing Authority sued 2 CPA firms re undiscovered fraud committed by Authority staff.
- Lower court ruled in favor of the CPA firms, holding that MA's proportionate liability statute did not displace Common Law Doctrine of *in pari delicto*. MA statute somewhat analogous to UAA §22.
- On appeal, AICPA and Mass. State Society filed *amici* briefs.
- MA Supreme Court reversed, rejecting the Common Law defense: "The need for accountants to fear the threat of liability is greater where a client's conduct is fraudulent rather than simply negligent, because fraudulent conduct is intentional (and potentially criminal), and an accountant's revelation of the conduct will not likely be welcomed by the client."

Thank you.