

Board of Accountancy  
Amended Minutes Rules Committee Meeting

Department of Business and Professional Regulation  
Conference Call  
August 29, 2017

Wednesday, August 29, 2017

Meeting was called to order at 1:30 p.m. by Chair, Dr. Fennema. The roll was called by Veloria Kelly, Executive Director.

David Dennis	Present
Martin Fennema	Present
Steve Vogel	Present

Mary Ellen Clark, Senior Assistant Attorney General and Board Counsel; Megan Kachur, Chief Prosecuting Attorney, Department of Business and Professional Regulation; Andrew Pietrylo, Senior Attorney, Department of Business and Professional Regulation; Mindy Rankin, Board Member, Veloria Kelly; Executive Director of the Board of Accountancy; Denise Graves and Richard Evans, Board Staff

Justin Thames, Florida Institute of Certified Public Accountants (FICPA) were present.

**1. Review and Consider Draft Language for Rules Required to Implement HB 987**

- a. **61H1-20.003 Client**
- b. **61H1-26.001 Form of Practice and Name Shared-Office Space**
- c. **61H1-26.003 Licensure of Florida Certified Public Accountant Firms**
- d. **61H1-26.004 Changes by Firms**
- e. **61H1-26.005 Address of Record**
- f. **61H1-29.002 Temporary License**
- g. **61H1-29.0025 Temporary License – Electronic Practice**
- h. **61H1-36.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances**

- The Committee discussed rule changes to implement House Bill 987. The Committee made the following recommendations:

**a. 61H1-20.001 Definitions.**

- No changes needed to the current rule.

**b. 61H1-20.003 Client.**

~~61H1-20.003 Client.~~ Not needed because it is already in statutes

~~“Client” shall be deemed and construed to mean the person(s) or entity which retains a certified public accountant or firm for the performance of public accounting services.~~

- Repeal the rule as the rule is already defined in statute.

**c. 61H1-26.001 Form of Practice and Name-Shared Office Space.**

(1) A Florida certified public accountant may practice public accounting, whether as an owner or employee, only in the form of a proprietorship, a partnership or a corporation, or a limited liability company. A Florida certified public accountant shall not allow any person to practice in his name that is not a partner or shareholder with him or in his employ. A Florida certified public accountant shall not practice under a name which is misleading or deceptive as to the legal form of the firm or as to persons who are partners, or shareholders of the firm or as to any other matter. In this regard:

(1) A Florida certified public accountant may practice public accounting under a fictitious name which is not misleading or deceptive as to the persons who are sole proprietors, partners, or shareholders; and

(b) A firm name may include the names of retired or deceased partners or shareholders or members who were active partners or shareholders or members of the entity. This provision permits a firm, in the same line of succession, to change from one form of business to another and continue to use the names of retired or deceased partners, shareholders or members.

(c) Use of the term “and Company” or “and Associates” requires at least one other fully employed Florida certified public accountant or non certified public accountant owner other than those named in the firm name; however, this rule does not preclude a Florida certified public accountant initially meeting this requirement from using the above-mentioned terms if the Florida certified public accountant subsequently does not fully employ at least one Florida certified public accountant other than those named in the firm name.

(d) A firm may use the term “Certified Public Accountants” in the firm’s name if all owners are certified public accountants. If there are non certified public accountant owners, the firm may use the terms “CPA Firm” “CPAs and Associates” or “Certified Public Accountants and Associates” provided the firm has more than one certified public accountant. Further, a certified public accountant firm with non certified public accountant owners may not use the term Certified Public Accountants without indicating there are other owners such as Associates or Consultants.

(e) A firm may only use the term “CPA,” “CPA Firm,” “CPAs and Associates,” “Certified Public Accountants and Associates,” or any other title, designation, words, letters, abbreviations, or device indicating that it is a CPA Firm if it holds a license issued pursuant to Section 473.3101, F.S.

- No change needed to the current rule.

#### **d. 61H1-26.003 Licensure of Florida Certified Public Accountant Firms.**

Every ~~Florida firm and non-Florida~~ firm required to be licensed pursuant to Section 473.3101, F.S., shall be certified for licensure by the Board on a biennial basis, and shall furnish its firm name, addresses and telephone numbers of its principal place of business main office as well as the names of all licensed professional staff and all non-licensed owners. Said firms must also disclose whether any non-certified public accountant owners have convictions or findings of guilt, regardless of adjudication, of a crime in any jurisdiction and judgment or settlements of civil lawsuits, or having been acted against including denial of licensure by any regulatory agency by a court or regulatory agency and any other matters which show a lack of good moral character. (good moral character is defined in Section 473.308(6)(a), F.S.).

Rulemaking Authority 473.304, 473.3101 FS. Law Implemented 473.3101 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-26.03, Amended 6-4-86, Formerly 21A-26.003, Amended 2-3-94, 12-30-97, 1-26-10, 10-7-12, 12-21-15.

#### **e. 61H1-26.004 Changes by Firms.**

(1) A firm licensed pursuant to Rule 61H1-26.003, F.A.C., shall file a written notification with the Department within thirty (30) days after the occurrence of any of the following events:

(a) through (e) No change.

(f) When the firm or any existing CPA or Non-CPA co-partner, shareholder or member has been the recipient of a conviction or finding of guilt, regardless of adjudication, of a crime in any jurisdiction; has been the subject of a judgment or settlements of a civil lawsuit (excluding domestic matters); has had the right to practice public accountancy acted against, including denial of licensure, imposition of a censure, fine, or corrective action, by the Securities Exchange Commission (SEC), Public Company Accounting Oversight Board (PCAOB), Internal Revenue Service (IRS), or any other regulatory agency or court; and any other matters which show a lack of good moral character as defined in Section 473.308(6)(a), F.S.

(2) No change.

Rulemaking Authority 473.304, 473.3101 FS. Law Implemented 473.3101 FS. History—New 12-4-79, Amended 2-3-81, Formerly 21A-26.04, Amended 6-4-86, Formerly 21A-26.004, Amended 11-3-97, 7-16-98, 8-17-98, 1-31-05, 8-28-06, 1-26-10, 2-6-13, 12-21-15, \_\_\_\_\_.

**f. 61H1-26.005 Address of Record.**

(1) All Florida certified public accountants, and licensed firms are required to have their correct street address of their principal place of business on file with the Board office as their address of record. A post office box may be used for a mailing address, but it must be in addition to the address of record.

(2) Any time a Florida certified public accountant or licensed firms changes or their address of record or mailing address, the Board office must be notified in writing within thirty days.

*Rulemaking Authority 473.304 FS. Law Implemented 455.275 FS. History--New 12-2-92, Formerly 21A-26.005, Amended 7-23-06, 12-27-09, 12-21-15,\_\_\_\_\_.*

**g. 61H1-29.002 Temporary License.**

(1) In each instance in which out-of-state certified public accountants or firms, not authorized to practice public accounting pursuant to the practice privileges granted to Section 473.3141, F.S., send out-of-state personnel into the state to perform a specific engagement, a temporary license will be required. Applications for temporary licenses must be filed thirty (30) prior to commencement of the engagement. A temporary license shall not be required of a person entering this state solely for the purpose of preparing federal tax returns or advising as to federal tax matters.

~~(2) Applications for temporary licenses to fulfill specific engagements shall be in writing directed to the Department on forms prescribed by the Department.~~

~~(3) Each application will be accompanied by the statement of the applicant, or if it is a partnership or professional service corporation, by a partner or shareholder of the applicant, to the effect that:~~

~~(a) Said work qualifies for a temporary license;~~

~~(b) \_\_\_\_\_ That \_\_\_\_\_ the applicant is not maintaining a full-time office and staff in the state for the full-time public accounting practice in the state through the use of a temporary license.~~

~~(4) The out-of-state certified public accountant shall furnish the Department with the names of all out-of-state personnel coming into the state to fulfill the specific engagement and such other information as required by Chapters 455 and 473, F.S., and rules promulgated pursuant thereto. If the out-of-state certified public accountant desires to substitute personnel or bring additional personnel into the state to fulfill the specific engagement, he shall notify the Department of the names of such substituted personnel or additional personnel as soon as practicable after the substitution or addition.~~

(5) An out-of-state certified public accountant who is a resident of Florida may not practice as a certified public accountant in Florida through the use of temporary licenses or the practice privileges granted to Section 473.3141, F.S., nor may he assume or use the titles or designations "certified public accountant," or "public accountant" or the abbreviation "CPA," or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that he holds an active license under Chapter 473, F.S., nor shall such person attest as an expert in accountancy to the reliability or fairness of presentation of financial information or utilize any form of disclaimer of opinion which is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed unless such person holds an active license under Chapter 473, F.S. This rule shall not prohibit the performance by such persons of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon.

~~(6) A temporary license may be denied for any one of the following: (a) The applicant has failed to fully complete required application;~~

~~(b) The applicant has committed any of the acts specified by Rule 61H1-36.004, F.A.C., which constitutes grounds for disciplinary action against a certified public accountant.~~

(7) Notwithstanding the above-stated requirements, a temporary license will not be required for an individual who does not have an office as defined by subsection 61H1-20.001(8), F.A.C., and either:

~~(a) Holds a valid license as a certified public accountant from a state the Board has determined to have adopted standards that are substantially equivalent to the certificate requirements in s. 5 of the Uniform Accountancy Act in the issuance of licenses (the Board's list of approved states, effective August 15, 2014, is incorporated herein and available at~~

~~<https://www.flrules.org/Gateway/reference.asp?No=Ref-05109> or at <http://www.myfloridalicense.com/dbpr/cpa/documents/MobilitySubstantiallyEquivalentrevised.pdf>); or~~

~~(b) Holds a valid license as a certified public accountant and obtains verification from the National Association of State Boards of Accountancy CredentialNet service that the individual meets certificate requirements in s. 5 of the Uniform Accountancy Act, seventh edition revised May 2014, which is incorporated herein by reference. The Board has determined that posting the incorporated material on the Internet would constitute a violation of federal copyright law. At the time of adoption, the copyrighted incorporated material will be available for public inspection and examination, but may not be copied, at the Board of Accountancy, 240 N.W. 76th Dr., Suite A, Gainesville, Florida 32607, and at the Department of State, Administrative Code and Register Section, Room 701, The Capitol, Tallahassee, Florida 32399-0250. CredentialNet can be reached at [credentialnet@nasba.org](mailto:credentialnet@nasba.org) or (866)350-0017.~~

- Mr. Thames indicated the Florida Institute of Certified Public Accountants (FICPA), has had some discussion about the rule and have some concerns about repealing the rule.
- Mr. Dennis suggested staff encourage firms to get a license vs. a temporary permit due to cost savings.
- Dr. Fennema suggested the Committee put the rule before the full Board for review.
- Ms. Clark will draft language for the rule and include it in the agenda.

#### **h. ~~61H1-29.0025 Temporary License – Electronic Practice.~~**

~~(1) Temporary licenses will be required of out-of-state certified public accountants or firms not authorized to practice public accounting pursuant to the practice privileges granted in Section 473.3141, F.S., who wish to practice public accountancy in this state via electronic means (other than for federal tax matters as provided by Section 473.314, F.S.).~~

~~(2) Applications for temporary licenses must be filed thirty (30) days prior to commencement of the engagement. Applications must be in writing and contain the information as specified in Section 473.314, F.S.~~

~~(3) Acceptance of the temporary license constitutes acceptance of the Board's jurisdiction over the work performed by the out- of-state certified public accountant or firm.~~

~~(4) The provisions of subsections 61H1-29.002(7) and (8), F.A.C., shall also apply to licenses for electronic practice.~~

- Repeal the entire rule.

#### **i. ~~61H1-34.002 Notice to Public by Non-Licensed Persons.~~**

~~A person or firm that is not a certified public accountant or authorized to practice public accounting pursuant to the practice privileges granted in Section 473.3141, F.S., shall not hold itself out as engaged in or as qualified to engage in the practice of public accounting; and shall not assume or use the titles or designations "certified public accountant" or "public accountant" or, a "CPA" or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate licensure to practice public accounting. Any such person or firm that is a member of, or is associated with any association, society or other group of accountants or public accountants, shall when indicating such membership association include the words "Not registered with the Board of Accountancy," "Not licensed by the Department of Business and Professional Regulation," or similar words in letters of equal size and prominence to those indicating association, society or other group membership or affiliation.~~

- No change needed.

**j. 61H1-39.005 Compliance with Peer Review Requirements.**

(1) An individual practicing pursuant to Section 473.3141, F.S., shall determine whether or not the individual performs services as specified in Section 473.3125(4), F.S.

(2) Effective January 1, 2015, if the firm performs services as specified in Section 473.3125(4), F.S., the firm shall enroll with a board-approved AE prior to submitting an application for licensure or an application for license renewal.

(3) For firms that renew their license for periods beginning January 1, 2015, the firm shall determine whether it performed services as specified in Section 473.3125(4), F.S., for the prior license period.

(a) If the firm performed services as specified in Section 473.3125(4), F.S., during the prior license renewal period, the firm shall enroll in a board approved peer review program.

(b) If the firm did not perform services as specified in Section 473.3125(4), F.S., during the prior license renewal period, the firm is not required to be enrolled in a board approved peer review program on January 1, 2015.

(c) If a firm that has not enrolled in a board approved AE at the time of licensure renewal subsequently decides to perform the services specified in Section 473.3125(4), F.S., the firm shall enroll in a board approved AE prior to performing such services.

(4) A firm is considered enrolled when it has completed the AE's application process and paid the enrollment fee. As part of any disciplinary action relating to services performed as specified in Section 473.3125(4), F.S., the board will require confirmation of the firm's enrollment by a board approved AE.

(5) A firm that is terminated by a board approved AE shall notify the board in writing within 30 days of the effective date of the termination and provide the termination letter from the AE.

- No change needed.

**k. 61H1-36.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.**

(1) No change.

(2) The following disciplinary guidelines shall be followed by the board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

VIOLATION	PENALTY RANGE	
	MINIMUM	MAXIMUM
(a) through (k) No change.		
(l) Suspension or revocation of right to practice in front of any state or federal agency, including the Public Company Accounting Oversight Board, (Sections 455.227(1)(f), 473.323(1)(j), F.S.)	Same penalty as imposed by agency or imposition of same range of penalties as those set forth in those rules for the same type of violation	
(m) through (ee) No change.		

(3) No change.

Rulemaking Authority 455.2273, 473.304 FS. Law Implemented 455.277, 455.2273, 473.323 FS. History—New 1-7-87, Amended 9-16-87, 8-25-88, 6-18-91, 12-30-91, Formerly 21A-36.004, Amended 12-7-93, 5-23-94, 8-16-99, 1-31-05, 7-28-10, 5-6-15, 9-30-15, 2-6-17, \_\_\_\_\_.

- The motion was made by Mr. Dennis, seconded by Mr. Vogel, to recommend amending the rules identified and place the rules on the Regulatory Plan. Upon vote, the motion passed unanimously.

**2. Other Business**

- Mr. Skup requested the Committee add 61H1-38.005 Scholarships, to the Regulatory Plan due to the Clay Ford Scholarship Committee recommendations.

### **3. Adjourn**

The meeting was adjourned by Dr. Fennema at 2:38 P.M.

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Dr. Martin Fennema, Chair