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Professional Ethics and Modern Business Tendencies*

BY WILLIAM B. FRANKE

It will be conceded, I believe, that the ethics of a profession are greatly affected by the growth of that profession. When only a few persons are engaged in the practice of a particular professional calling the possibilities of encroachment one upon another are slight. In a profession such as ours, however, in which the number of persons engaged is already considerable and is constantly increasing, and in which the scope of activity is ever broadening, it is desirable to consider at periodic intervals whether our rules of conduct, which have been formulated at some prior date, are still satisfactory.

If rules of professional conduct are to be satisfactory it must be evident to each person who follows them that they produce satisfactory results. In measuring these results not only must the financial return be considered but also the happiness and contentment derived by the individual practitioner through the conduct of his practice in an ethical manner. If through the observance of a code of ethics members of a profession achieve these results, then that code may be considered not only satisfactory but practical. It is, therefore, from the standpoint of practicability as opposed to theory, and in the light of present day conditions, that I submit for your consideration my comments on the rules of professional conduct which have been adopted by this Institute.

There are twelve rules of conduct in effect at this time, including amendments declared effective May 16, 1929.

The first rule relates to the use by a firm or partnership of the description "Members of the American Institute of Accountants," and restricts the use of this caption to partnerships all of whose members are either members or associates of the Institute. It requires no comment.

The second rule provides for the expulsion or discipline of a member who either wilfully, or as the result of inexcusable gross negligence, certifies to statements containing essential misstatements of facts or omissions tantamount thereto. This is, of course, a thoroughly practical rule and one which will always be modern.

*A paper presented at the annual meeting of the American Institute of Accountants, Colorado Springs, September, 1930.

Rule number three states that no member or associate shall allow any person to practise in his name as a public accountant who is not a member or an associate of the Institute or in partnership with him or in his employ on a salary. I had never heard of a case where an accountant permitted another accountant not in partnership with him or in his employ to use his name until a few years ago. A young accountant, not a member of the Institute, came into the office one day to ask for a position on our staff. He told me that he had been engaged in practice on his own account in a small town not far distant, but because of circumstances surrounding his practice he had decided that it would be preferable to give it up and obtain a position as a staff member in another firm. The circumstances to which he referred were these. He had been reared in this same small town, had taken an accountancy course after graduation from high school, and had had two years' experience with a small public accounting firm. Through family friends he was assured of a small amount of work if he opened an office for himself. However, the more important work in town he felt he could not obtain without more prestige than his own name would give. Feeling the need of advice he obtained an interview with a partner in a fairly well-known firm in a large city. Much to his surprise this partner suggested an arrangement whereby the young accountant would be permitted to use the name of the firm and its stationery. He would be allowed to sign the firm name to letters and reports without any supervision of his work or approval of his reports by the firm. The only stipulation was that he should pay a percentage of his gross fees to the firm. Fortunately for the young accountant, when he had practised for a few months under the plan, he realized that it was dangerous for both parties and decided to give it up. In a case such as this the necessity for the Institute rule is obvious. Had the young accountant made a serious mistake, as he well might have done, and had the firm he represented been composed of members of the Institute, as it was, harm would have been done to the Institute and to the whole profession.

Rule number four forbids the giving or accepting of commissions or other participation to or from the laity. This rule prevents, for example, the giving of commissions to outsiders for engagements obtained through them, and the accepting of commissions from stationers and promoters for business turned over to them as an incident of services to clients. It seems unneces-

sary to discuss this rule at any great length. A professional man who would give his best services must be absolutely uninfluenced by external matters. This necessary state of mind can not be induced if an accountant depends to any extent upon the purchase of a certain number of the engagements which he performs or if he is forever considering ways and means of making money through his clients other than as a return for professional service. Furthermore, of course, the feeling of a client toward an accountant who engages in this sort of thing, if the client finds out about it, is apt not to be a particularly friendly one. The client may feel that perhaps he could have gotten better stationery at a lower price or have sold more bonds or stock at a lower underwriting cost. It is probable that he will feel that much more favorable results would have been produced had the accountant not been financially interested. A few days ago, during the course of a conversation with a manufacturer of pharmaceutical preparations, I learned somewhat to my surprise that most of the sales of this manufacturers' products, which are not widely advertised, are made through physicians who prescribe them and receive monthly commissions based upon the sales value of prescriptions written, the reports of prescriptions being transmitted to the manufacturer through designated pharmacists in particular cities. Such an arrangement is a violation of medical ethics, and the reason is obvious. If my physician prescribed one of these preparations and I learned that in addition to the fee he charged me he was receiving a commission on the sales value of the prescription, I would feel that perhaps the commission might have prejudiced his prescription for the cure of my particular illness. This illustration is similar to that of an accountant having an arrangement with a stationer.

The fifth rule provides that no member or associate shall engage in any business or occupation conjointly with that of a public accountant which is incompatible or inconsistent therewith. I presume that cases have arisen which have made this rule necessary. Most of the accountants I know, however, have had to work so hard at their profession that they could not possibly have found time to indulge in any other sort of work.

Rule number six prohibits the certification of work which has not been verified by the accountant himself, a member of his firm, one of his staff, a member or an associate of the Institute, or a member of a similar association of good standing in a foreign

country, which has been approved by the council. This of course is a basic rule and one about which there can be no argument. Unfortunately the observance of this rule does not guarantee that all work turned out will be satisfactory. The profession has grown so rapidly in the last few years and it has been so difficult to obtain competent men that in some instances men have been employed to supervise engagements who were not competent to exercise such supervision. This is, of course, the danger which arises in an expanding practice. It is because of this danger that one excellent accountant whom I know has limited his business so that he may be assured of proper supervision of the work turned out by his office.

Rule number seven requires that a member or an associate who shall in any way attempt to secure the amendment or enactment of laws affecting the practice of the profession shall give notice thereof to the Institute. This rule may require a lot of letter writing if you live in New York state and make an annual effort to change the New York state C. P. A. law, but nevertheless it is a good rule.

Now we come to rule number eight. This rule reads as follows: "No member or associate shall directly or indirectly solicit the clients or encroach upon the business of another member or associate, but it is the right of any member or associate to give proper service and advice to those asking such service or advice."

What controversy this rule has caused! Writing a paper of any sort is educational. For example, I never before knew that the prescribed ethics of the Institute do not forbid the solicitation of business where no member of the Institute is already on the job. I am somewhat curious to know just how one goes about soliciting the business of a prospective client, bearing in mind the wording of rule number eight. I can picture the solicitor gaining admission to the office of the hoped-for new client. But then what does he do? Is his first inquiry, "Who are your present accountants, if any?" If there are any and he is told the name of the firm does he then turn his back and hastily thumb through the pages of the last Institute year-book in order to find out if the partners of the firm are members of the Institute? If they are I presume he makes a polite excuse and leaves—providing he follows rule eight. If they are not, then I suppose he goes ahead with his sales talk and tries to take the business away from the firm regardless of how competent it may be. Supposing that he

secures the engagement in these circumstances, imagine how horrified he would be if upon returning to his office he found that the partners of the firm he has displaced were elected to membership since the publication of the last year-book. One should be careful about these things. Actually I am afraid that if a member decides to solicit and gets as far as an interview he casts ethics to the four winds and forgets that there is such a thing.

It seems to me that it is about time that we fell in line with the older professions and barred all kinds of soliciting to the members of this association. Personally I am of the firm opinion that, in the first place, not enough business is secured through solicitation to warrant the expense, and in the second place the kind of business which results from solicitation is apt to be quite undesirable. I have in mind the experience of two exceptionally well-qualified young men who started to practise accounting at about the same time. The first man decided that there was only one way to get business and that was to go after it. Accordingly he plotted the city into sections and started out on a sort of store-to-store and office-to-office canvass. In the course of three years he had secured perhaps a half-dozen monthly clients at from \$10.00 to \$25.00 a month a client. At the end of the three years, however, he was tired out, soliciting being hard work for the accounting personality, and had practically nothing to show for his efforts. He finally gave up his small practice and took a corporation position at which he has done extremely well. The other accountant opened an office in a smaller city at the request of a bank, which incidentally never gave him any business after he had opened his office. He did no soliciting whatsoever but spent his time in becoming acquainted with the people of the community in a perfectly ethical and proper manner. It was rather hard sailing for a time but it was not long before he found that business was beginning to come into his office. Not being required to solicit he was able to give his full thought and attention to the few jobs which he had with the result that his work was so well done that in many instances new jobs came from old ones. At the end of his three-year period he was well known in his city and had the beginnings of a lucrative practice. Now, of course, I realize that some people may say that the second man solicited business in an indirect manner by making acquaintances which he felt might be good for his business. The fallacy in that statement is that any work which came to him came voluntarily, which placed him in a

far different position from that of the first man who went out after the business he got. A solicited engagement places an accountant in a queer position to the client. The client is very apt to feel that he has employed the accountant just as he would employ a bookkeeper, and, therefore, that he is entitled to dictate the manner in which the accountant shall perform his work and the sort of report he shall render.

I believe that the solicitation of accounting work is in the long run a tremendous handicap for the reason that it puts the accountant who indulges in such a practice into a class from which he never escapes. Using as an illustration another profession, if you knew that a lawyer were in the habit of obtaining his business through solicitation you certainly would not engage him as your attorney if you required legal service. The same thing is true of the accountancy profession. If you obtain a reputation of soliciting business the desirable men in the community, who intuitively dislike such a manner of securing business, will engage a practitioner who avoids solicitation.

I hope that the members of this Institute will soon realize that we have reached the point where we can not afford to differ from the older professions in points of basic professional ethics and will agree that solicitation of business whether from prospective clients who employ members of the Institute, or those who employ accountants who are not members of the Institute, or those who have no accountants whatsoever, should be barred.

Rule number nine provides that an Institute member or associate shall not take away the employee of another member or associate unless the initiative is on the part of such employee. This requires no discussion.

Rule number ten relates to professional fees and states that no member or associate shall render or offer to render professional services, the fee for which shall be contingent upon his findings and the results thereof. I have often wondered why an accountant should offer to render services upon the contingent-fee basis. It seems to me a thoroughly unpractical method of practising a profession unless an accountant has so little to do that he can afford to devote his time to work which, if it produces nothing, will not put him in a worse position than before. If it is this sort of accountant who does contingent-fee work then, of course, the prospective client, if he realizes that fact, is unwise in employing him upon such a basis because of the quality of service which he

probably will render. Most contingent fees, of course, relate to tax work, and since this is not of such importance these days as it used to be, the question of contingent fees is correspondingly less important.

Rule number eleven is the longest of all the rules prescribed, and, in my opinion all of the space which it takes up is wasted. It states first that no member or associate shall advertise through the mails, in the public prints or otherwise, except by the publication in the public prints of what is technically known as a "card." The definition of such a card is next given in minute detail, following which are given the sizes of the cards permitted for newspapers, magazines, directories and similar publications.

It is my experience that the hope of obtaining engagements through the use of card advertising is groundless. There is absolutely nothing in it from the standpoint of return for money spent. This spring a representative of a New York newspaper called up the office and stated that for a consideration it would publish the name of my firm together with the names of other firms and would state that all of the firms were New York accountants who would be pleased to undertake the preparation of New York state personal income-tax returns. The young lady who telephoned was quite incensed because I stated I was not at all interested and thought it would be a waste of money. This is a good illustration of the absurdity of advertising. In practically every case where a man has to file personal returns he will be more apt to need help in the preparation of his federal than his New York state return. If he prepares his federal return himself then, barring unusual circumstances, he will be able to prepare his New York state return. If he employs accountants to prepare his federal return, then for reasons of economy, if for no other, he will employ the same accountants to prepare his New York state return. Despite this reasoning, which I believe to be sound, the list of accountants willing to perform this service was of considerable length.

The firms with which I have been associated have occasionally placed cards in publications of clients, such as chamber-of-commerce magazines, when it was difficult to refuse. I recall one instance when we were reminded that the publication of such cards was permitted by the Institute. However, I do not recall that one dollar's worth of return ever came from such advertisements. In my opinion they are not only unpractical but undigni-

fied. Certainly reputable physicians do not advertise, although I heard of a case the other day which we might say was on the border-line. I can not vouch for the truth of this story but it seems that a young physician joined a golf club. He was asked if he would like his name stamped on his golf balls. After a moment's hesitation he said, "Yes, and under the name put on 'office hours two to four and seven to nine'." I do not propose to pass upon the ethics of this case but I do know that when we read advertisements of physicians we assume that the advertisers are quacks. In the case of this rule, as in that of solicitation, I feel that we should be more restrictive and should prohibit advertising whether by card or otherwise.

The twelfth rule relates to the participation by a member or an associate in any manner in the activities of a university, college or school which conducts its operations, solicits students, or advertises courses, by methods discreditable to the profession. This rule is so seldom invoked that I feel it does not require discussion.

I have a few more comments to make which, while they do not relate strictly to ethics, refer to the manner in which the profession is developing in high ideals and friendly associations.

I have noticed in the last two or three years the spirit of helpfulness which seems to be developing among the members of the Institute. I have observed a willingness to exchange opinions, to lend staff members when one firm has an engagement to perform which is larger than can be handled by the members of its own staff, to give advice, and even to lend the services of partners, in cases where a particular piece of work requires certain specialized knowledge. I hope that this willingness to help and coöperate may continue to increase.

Following the same general trend among accountants, I have also noticed the development of a disinclination to accept engagements which have been performed in a perfectly satisfactory manner by other accountants, unless there is a real reason for making a change. I recall that about three years ago there was a reorganization of a company whose accounts my firm had audited for some years. The reorganization brought in new capital and the bankers asked that the books be audited for a period of five years by a large firm whose name would add weight to the prospectus covering the sale of new stock. A prominent New York accountant was requested to make this five-year in-

vestigation. He inquired the name of the firm which had been making the annual audits. When he found that my firm had been the auditors for a considerable period of years he stated that he knew the partners of the firm and felt that we were trustworthy. He suggested that our reports be accepted and that we be engaged to draw up any figures which might be desired for use in the prospectus.

This was the first time I had ever heard of this sort of thing by an accountant. While his suggestion was not accepted by the bankers and he was required to make the examination, nevertheless I felt extremely grateful to him for the attitude which he had taken, although I felt that it was perhaps unnecessary for him to have been quite so fair as he was. However, I had an opportunity to find out that this attitude was entirely a practical one and I must admit that I found it out rather to my surprise.

A man whose business accounts we audit had established some years ago a half dozen small trust funds. The securities of the trust funds were invested by his broker and the books for the funds were kept in the broker's office. A quarterly audit was made by the same firm of accountants which audited the broker's books, a small firm but one with a high standing. My client requested me to meet him at his broker's office one day, and when I arrived he requested me to look over the books of the trust funds and give him an idea how much an audit would cost. When I found that he had been having the audits made by another firm I asked why he wished to make a change and found out that the only reason was because of his friendly feeling toward me. Having in mind the time when the shoe was on the other foot, I told him that I could see no reason for making a change on such a basis inasmuch as the other firm had been entirely satisfactory. The result was that we did not secure this engagement. Moreover, at the time my client was not wholly pleased with my attitude. The reactions, however, of which there were two, were worth far more than the engagement itself. In the first place about a month afterward my client came to me and said that he had given considerable thought to the matter. He had decided that our attitude was the proper one, and he respected us for not having wished to accept the engagement. The second development came through the attorney of this client. This attorney, who is a member of a wealthy family which has established a number of trust funds, heard of the incident from our mutual client. The attor-

ney approved of the position which we had taken and as a result decided to have us audit his family's trust funds. This engagement produced in annual fees twice what the other would have produced. The illustration is almost too apt, but I can assure you it is truthful. It convinced me that the attitude of my accounting friend who was reluctant to take my work was not wholly idealistic.

I believe that the modern tendency in our profession is toward the adoption of a more restrictive code of ethics and, beyond that, to the following of ideals which surpass ethics. Do not, however, give too much credit to the man who lives up to the highest ideals of the profession. He deserves not to be praised but to be complimented upon his sagacity, for, in my opinion, he has chosen the sure road to success.