Thinking About Tax Malpractice: Outline and Hypotheticals

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There may be a lot of ethical traps that face the tax practitioner but there are also common-sense ways to avoid them.

I. Malpractice And Related Causes Of Action

Such causes of action generally require proof that (1) the defendant owed a duty to the plaintiff, be it under tort law, a contract, or a statute; (2) the defendant breached the duty; (3) the breach was the cause (referred to as “proximate cause” in torts cases) of an injury to the plaintiff; and (4) the injury resulted in actual damages to the plaintiff. Certain causes of action require additional elements of proof.


1. Must exercise competence and diligence “normally exercised by lawyers in similar circumstances.” Restatement §52(1).

2. Duty of Competence – See Model Rules of Professional Conduct (“MRPC”) 1.1. Standards and practices relevant are generally those of lawyers handling similar matters in the state, but in cases where there is a national practice, national standards may be relevant. See Comment b to Restatement §52. See also Proposed Circular 230, §10.35 (available at 77 Fed. Reg. 57055, 57061 (Sept. 17, 2012)), which would add a competence standard to Circular 230. See 77 Fed. Reg. 57,055, 57,061 (Sept. 17, 2012).

3. Is there a duty to refer to an expert? See MRPC 1.1 and Horne v. Peckham, 158 Cal. Rptr. 714 (Cal. Ct. App. 1979), indicating duty to either acquire appropriate expertise or refer to an expert. Cf. Cal. Rules of Professional Conduct 3-110(C) (lawyer lacking sufficient learning and skill may perform services competently by “1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required”). For guidance on retaining or contracting with lawyers outside the lawyer’s own firm, see MRPC 1.1, Comment 6, as amended in 2012.

4. Duty of Diligence. See MRPC 1.3; Comment e to Restatement §52. Cal. R.P. C. 3-110(B) refers to diligence as one element in the definition of “competence.”

5. Duty to Communicate. See MRPC 1.4, Cal. R.P. C. 3-500 and 3-510, and Restatement §20(3) – Crucial to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
6. Failure to Deal with Conflict of Interest Properly. See MRPC 1.7 ff.; Circular 230, §10.29; Restatement, Ch. 8. This can be viewed also as an element of the duties of competence and diligence.

B. Breach of Contract


D. Intentional Misrepresentation (Deceit)

E. Negligent Misrepresentation

F. Aiding and Abetting a Breach of Fiduciary Duty (recognized in some states). See Restatement §51(4), indicating liability depends on lawyer knowing that action by the lawyer is “necessary with respect to a matter within the scope of the representation [of the fiduciary] to prevent or rectify the breach of a fiduciary duty owed by the client to the non-client, where (i) the breach is a crime or fraud or (ii) the lawyer has assisted or is assisting the breach.” The Restatement also requires that the nonclient not be reasonably able to protect its rights and that the duty to the non-client not significantly impair the performance of the lawyer’s obligations to the client.

G. Other

1. Civil Conspiracy
2. Unfair Trade Practices
3. False or Deceptive Trade Practices
4. Breach of Covenant of Good Faith and Fair Dealing
5. Intentional or Negligent Infliction of Emotional Distress
6. Securities Law Violations

II. Issues

A. Statutes Of Limitations And Repose. The application of the statute of limitations and the statute of repose, if any, must be researched in any situation because both statutes may depend on both the cause of action involved and the jurisdiction. In some cases, it may be unclear which jurisdiction’s statutes apply. Uncertainty about the applicable statute of limitations and whether and when it may have been tolled in any given situation is an important reason why most tax shelter malpractice and related actions have been settled.

1. For one holding on this subject that is very unfavorable to defendants in such suits, see Corporex Cos. v. Proskauer Rose, 713 F. Supp. 2d 678 (E.D. Ky. 2010), applying Kentucky law under the Erie doctrine to hold that the limitations period in a tax shelter legal malpractice action only started running when the exact amount of the plaintiff’s liability to the IRS was finally determined.
2. The application of statutes of repose presents jurisdictional variations and uncertainties similar to those with statutes of limitations. While statutes of repose often work to the advantage of the defendant attorney, they may be tolled by the same facts that result in the statute of limitations being tolled. See e.g., Cal. Civ. Proc. Code §340.6(a), listing various grounds for tolling. However, there is little law in most jurisdictions on the impact of tolling doctrines such as fraudulent concealment or continuing representation on the statute of repose, leaving the effect of the statute of repose, if applicable, in question.

3. As an example of the confusion about the statute of limitations, consider California which, like many states, has special statutes of limitations and repose for malpractice actions filed against lawyers. Cal. Civ. Proc. Code §340.6. While the basic statute of limitations is only one year and the statute of repose is four years, both are tolled until the client sustains “actual injury,” a determination which depends on the facts and circumstances. See Jordache Enterprises v. Brobeck, Phleger & Harrison, 958 P.2d 1062 (Cal. 1998). It is unclear what this might mean in various possible tax malpractice contexts. By contrast, the same action filed against a CPA would be subject to a general statute of limitations. See e.g., Int’l Engine Parts, Inc. v. Feddersen & Co., 888 P.2d 1279 (Cal. 1995) (applying general two-year statute of limitations in Cal. Civ. Proc. Code §339 to action against accountant for negligent preparation of tax return; “actual injury” did not arise until final IRS administrative appeal process, which resulted in reversal of claimed deficiency and substantial refund, was concluded).


1. Back Taxes. Generally not recoverable if advice only with respect to proper reporting on return, but may be recoverable as consequential damages in some contexts. See below.

2. Interest Paid to IRS: Three views:
   a) Interest paid to IRS is for use of money — not recoverable. This “traditional” view is followed by only a few states today.
   b) Interest is recoverable because payable because of wrong tax advice.
   c) Interest is only recoverable to the extent it exceeds interest actually earned on underpaid taxes. This more sophisticated view is probably the better view. See Jacob L. Todres, Recovery of Interest on a Tax Underpayment Caused by a Tax Advisor’s Negligence, 26 Akron L.J. 1 (2011).

3. Penalties. Should be recoverable.

4. Legal fees for contesting underlying tax liability. May be recoverable.
5. Consequential Damages. Difficult to prove; if taxpayer can establish that it would not have entered into tax shelter transaction absent defendant’s malpractice, taxes paid as a result of entering into transaction may be a factor in complex computation of consequential damages.

C. Recovery Of Fees Paid To Defendant

1. Negligence. Plaintiff may elect restitution instead of damages.

2. Breach of Fiduciary Duty. Fees may be recoverable without actual damages: “A lawyer engaging in clear and serious violation of duty to a client may be required to forfeit some or all of the lawyer’s compensation for the matter. [Relevant considerations] include the gravity and timing of the violation, its willfulness, its effect on the value of the lawyer’s work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies.” Restatement §37. Fee forfeiture would ordinarily not be available in a pure negligence action.

D. To Whom Does Liability Extend?

1. Privity. This is a big issue in the estate planning area. Some states, by requiring privity for a malpractice action, effectively bar such actions by beneficiaries of the estate or even the personal representative. In most states, however, strict privity is no longer required, thus opening the courts to more estate planning malpractice claims. California noted the problem with requiring strict privity in such cases nearly 40 years ago: “Arguably, the interests of a beneficiary are even greater than those of the testator or settlor. After the death of the testator or settlor, a failure in the scheme of disposition works no practical effect except to deprive his intended beneficiaries of the intended bequest…. Unless the beneficiaries can recover against the attorney, no one could do so and the social policy of preventing future harm would be frustrated.” Bucquet v. Livingston, 129 Cal. Rptr. 514, 521 (Cal. Ct. App. 1976). But see Chang v. Lederman, 90 Cal. Rptr. 3d 758 (Cal. Ct. App. 2009), limiting duty to potential beneficiaries to situations where the testator’s intent to provide for the beneficiary is expressed and formalized in a signed will. Nonetheless, it was only in 2010 that strict privity in this context was abandoned in New York, and then, only begrudgingly. See Estate of Schneider v. Finmann, 933 N.E.2d 718 (N.Y. 2010) (personal representative has privity or a “relationship sufficiently approaching privity” with decedent’s estate planning attorney to pursue malpractice suit; collecting cases and noting that only a minority of states require strict privity).

2. Intended Beneficiaries. Restatement §51(3) (liability to non-client “when and to the extent that: (a) the lawyer knows that a client intends as one of the primary objectives of the representation that the lawyer’s services benefit the non-client; (b) such a duty would not significantly impair the lawyer’s performance of obligations to a client; and (c) the absence of such a duty would make enforcement of those obligations to the client unlikely”).


E. Relevance Of Ethics Rules In Establishing Duty Of Attorney
1. MRPC Scope, ¶ 20: “Violation of a rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached…. [The Rules] are not designed to be a basis for civil liability…. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer’s violation of a rule may be evidence of breach of the applicable standard of conduct.” See also Restatement §52(2), which refers to rules and statutes and adds that a rule or statute “may be considered by the trier of fact as an aid in understanding and applying the [standard of care or of fiduciary duty]” to the extent (i) “designed for the protection of persons in the position of the claimant and (ii) proof of the content and construction of such a rule or statute is relevant to the claimant’s claim.”

2. State Variations


b) Violation of rule is evidence of negligence — majority view. See, e.g., Ruden v. Jenk, 543 N.W.2d 605, 611 (Iowa 1996).

c) Violation of rule not admissible as evidence for plaintiff. Hizey v. Carpenter, 830 P.2d 646 (Wash. 1992), is the leading case for this minority view. Alabama has adopted this position by statute.

F. Some Defenses

1. Contributory or Comparative Negligence and Comparative Fault
2. The Avoidable-Consequences Rule
3. Unlawful Conduct

III. Special Issues Arising Out Of Tax Practice

A. Substantive Tax Law

1. Relevance of Taxpayer Accuracy Standards. At a minimum, a lawyer must advise a client whether a position advised is consistent with the taxpayer accuracy standards and, if it is not, of the penalty to which the taxpayer may be subject in the event a sub-standard position is taken on the return. The lawyer also needs to explain the applicable taxpayer accuracy standard (e.g., “substantial authority”) fully enough for the taxpayer to be able to make an informed decision with respect to taking any position involved on the tax return.

2. Relevance of Return Preparer Accuracy Standards. Should be relevant as to the substance of the tax practitioner’s advice, but more is probably required of the practitioner in the form of communication to the taxpayer, as noted above.
3. What does the Restatement language suggest here? Are these standards “designed for the protection” of taxpayers within the meaning of the Restatement?

B. Circular 230

1. Duties that Parallel Ethics Rules

   a) Is violation of the Circular 230 rule admissible to show breach of a duty? Presumably, the courts will treat Circular 230 rules of this kind, such as section 10.22, regarding due diligence and proposed section 10.35, regarding competence, the same as parallel state bar ethics rules.

   b) Is Circular 230 compliance admissible to show that a tax practitioner satisfied the duty of care?

2. Other Duties. Consider the requirements for covered opinions or the proposed enhanced requirements for written advice. Are all of these requirements “designed for the protection” of taxpayers within the meaning of the Restatement? This seems unlikely in the case of at least some parts of the section 10.35 covered opinion rules, and perhaps in the case of some parts of the proposed section 10.37 written advice standards as well. Other parts of Circular 230 also seem to be directed more at protecting the IRS’s interest than at protecting the taxpayer-client; violation of such provisions may be much less likely to be admissible as evidence of the practitioner’s breach of a duty to the taxpayer-client.

IV. General Malpractice Prevention And Avoidance Procedures

A. Calendaring Systems

   1. To Prevent Missing Deadlines
   2. To Schedule Regular Communication with Clients

B. Client Screening Procedures

   1. Conflicts of Interest Screening – Potential or Actual

      a. Value depends on data entry

      b. Persons, entities, and interests that firms may want to consider entering into the data base are extensive — attorneys, staff members, prospective clients and declined clients, former employers of attorneys and staff members, attorneys for parties with opposing or conflicting interests, business interests of attorneys and staff members, adverse parties, co-defendants and co-plaintiffs, parties with similar interests (such as partners of a client), family members of some of the above (especially of clients), and third parties paying for representation (such as insurance companies). Obviously, not all persons in each of these categories of persons are likely to be appropriate for inclusion in all cases, but these are categories of persons that are worth considering for inclusion.
c. Others may need to be entered depending on the nature of the representation — for example, in estate planning, the testator, the personal representative, spouses (current and ex), children and other possible heirs, devisees, trustees and guardians. For a corporate representation, the data base should include, *inter alia*, major shareholders (or all if closely held), officers, directors, key employees, and subsidiaries and affiliates as well as their officers, directors and key employees. These listings of suggested persons and entities to include in the data base draw on a much more extensive discussion in Susan Saab Fortney & Jett Hanna, *Fortifying a Law Firm’s Ethical Infrastructure: Avoiding Legal Malpractice Claims Based on Conflicts of Interest*, 33 St. Mary’s L.J. 669 (2002).

2. Avoidance of Problem Clients. Examples: clients who can’t or won’t pay, clients who have changed lawyers and may be “difficult,” etc.

3. Can the firm handle the case?
   a. Expertise?
   b. Staffing?
   c. Costs that must be advanced?

C. **Document Dealings With Clients Or Declined Prospective Clients**

1. Use engagement letters signed by the client, including among other things:
   a. The scope of the intended representation
   b. Fee arrangements and any reserved right to change fee arrangements, as well as billing procedures
   c. Anticipated expenses and how they will be handled
   d. Expectations about client cooperation and communications from attorney
   e. Staffing plans
   f. Disclosures of conflicts and informed consent if necessary, although it may be wise to put this in a separate document in light of the possibility that the IRS may ask to see a copy of the informed consent
   g. Signed and dated by client

2. Send a written non-engagement letter if declining to represent a prospective client (by certified mail, return receipt requested).

3. Send a client termination letter when the engagement is completed. This can be sent with the final statement and “thank you” for having been engaged.

4. Confirm all important advice to clients in writing.

D. **Develop a Risk Management Program**

V. **Hypotheticals**
A. Invalid Regulation

Corp is a US corporation and parent of a US consolidated return group. The IRS has asserted a deficiency based upon the application of Treas. Reg. §1.1502-13 (intercompany transactions within a consolidated group). Corp hires Lawyer to assist Corp in appealing the deficiency to IRS Appeals. Corp chose Lawyer because Lawyer advertises himself (in conferences, in articles and on his firm’s website) as a “recognized expert on the consolidated return rules”. Lawyer has never before handled an appeal to IRS Appeals, but Corp never asks about this and Lawyer never mentions it. Lawyer tells Corp he believes that the IRS application of the Reg is correct and Corp will be lucky to get anything from Appeals other than an offer to pay the full amount assessed.

Based upon Lawyer’s advice, Corp settles the audit paying 95 percent of what the IRS claimed was due. A year later, a District Court in the same circuit as Corp declares the Reg invalid (in a case involving a different taxpayer). Can Corp sue Lawyer for malpractice?

B. International

Lawyer is hired by a new Client. Client tells Lawyer, “I am a U.S. citizen and I want to invest in my brother-in-law’s Italian restaurant. I’ve heard all about the offshore bank account thing going on in the US and I want to make sure that if the restaurant has a non-US bank account, that won’t make me, as a shareholder, need to file anything in the US.” Lawyer asks Client if Client would like advice on the US tax consequences of making the investment and Client says he knows the US tax consequences already. He just wants to know about the bank account thing. Lawyer provides accurate advice about the bank account and Client pays in cash. Two years later, Client sues Lawyer on the grounds that Lawyer failed to advise him about the US tax implications of investing in a PFIC (which the restaurant was) and about how Client could have avoided the consequences by making a QEF election. What result? What should Lawyer have done to protect against such a claim?

C. Advice That Tax Shelter Will Not Work

Lawyer is hired by a new Client to advise on whether a tax shelter that is being marketed to Client works. Lawyer tells Client that the tax shelter clearly does not work. Client does not invest in the shelter. Years later, other taxpayers are in court with the same shelter, and the courts consistently find for the taxpayers. Can Client sue Lawyer for malpractice?

D. More Likely Than Not Tax Shelter Advice Not Satisfying Circular 230 Rules

New Client engages Lawyer to advise on whether a tax shelter being marketed to Client works. Lawyer provides oral advice that the desired tax consequences are more likely than not to result. Client enters into the tax shelter transaction. The IRS challenges the transaction and Client, learning of IRS court victories in two similar cases, settles the case, paying the tax owed, interest on the back taxes and a 10 percent penalty. Assuming a reasonable tax lawyer would have agreed with Lawyer’s oral advice, can client successfully sue Lawyer for malpractice? Is the answer different if the advice was in writing, but failed to satisfy all of the requirements of the covered opinion rules in effect at the time under section 10.35 of Circular 230? Would the answer be different if the advice was in writing, but the covered opinion rules had been replaced by provisions akin to the proposed version of
Circular 230’s section 10.37 written advice standards? In a successful malpractice suit, what would be the measure of damages?

E. Tax Shelter Advice Satisfying the Circular 230 Rules, But Missing An Issue

Lawyer writes an extensive, seemingly complete opinion for Client about a proposed transaction concluding that the transaction is more likely than not to result in the desired tax consequences. The opinion satisfies the covered opinion rules of Circular 230, §10.35 for a reliance opinion and would appear to satisfy the enhanced section 10.37 written advice standards proposed in connection with the deletion of the covered opinion rules. Client enters into the transaction. When the transaction is audited by the IRS, the IRS asserts a ground that the lawyer had not considered in the opinion. If the IRS wins the case based upon that ground, can Client sue for malpractice? Does it matter whether the more likely than not conclusion was correct when provided? Is the answer different if the opinion fails to satisfy the covered opinion rules or the enhanced version of the Circular 230 written advice standards, whichever is applicable? What should the opinion have included to enhance Lawyer’s defense against malpractice charges?

F. Estate Planning For Married Couple

Husband and Wife come to Attorney to draft their estate plans. Although their major assets are currently held in a joint tenancy with rights of survivorship, which they say they do not plan to change, the couple discuss a joint trust for their separate assets at the meeting. However, after the meeting, Husband contacts Attorney and has him draft a separate trust that leaves everything he owns to his children from a prior marriage. Attorney, at Husband’s direction, then breaks the joint tenancy to fund the separate trust and puts Husband’s half of the joint tenancy assets into the separate trust. Wife knows nothing of this, but Attorney drafts a separate trust for her that leaves everything she owns to her children from a prior marriage. Husband dies and then Wife finds out that he has a separate trust.

Can Wife sue Attorney for malpractice or for breach of fiduciary duty? If so, when does the statute of limitations begin to run in this situation? Would the result be different if Attorney had obtained a waiver of the spousal conflict of interest?

G. Charitable Remainder Trusts

Unsophisticated but wealthy Client (due to recent inheritance) comes to First Attorney for an estate plan. The client was referred to First Attorney by a financial advisor. First Attorney creates charitable remainder trusts and refers Client back to the financial advisor who arranges for purchases of annuities that will provide an income stream for Client.

Client goes to Second Attorney, likely prompted by his daughter who realizes “her” inheritance will now go to charities. On the advice of Second Attorney, Client sells the annuities, claiming that they were inappropriate investments for him. Client incurs substantial financial penalties. Can client sue First Attorney for malpractice or for breach of fiduciary duty? Would the result be different if Client was mentally incompetent and First Attorney worked exclusively with Client’s attorney-in-fact?
H. Business Transaction With Estate-Planning Client

Unsophisticated and elderly Client comes to Attorney for estate planning advice. Attorney convinces Client to purchase annuities that earn him (Attorney) significant commissions. The following year, Client needs funds for medical expenses, so she sells the annuities and incurs substantial financial penalties. Can Client sue Attorney for malpractice or for breach of fiduciary duty? Can Attorney be criminally charged with financial elder abuse?

I. Tax Shelter Settlement Notice

Client entered into a tax shelter marketed to Client by his regular accountant. Client sought advice from Tax Attorney, who provided him with an informal opinion that the shelter worked. This was the only time that Client used Tax Attorney’s services. Client entered into the transaction and filed his return claiming the loss that it purportedly generated. Six months after Client’s return was filed, the IRS issued a public Notice regarding the shelter and offering a settlement that required taxpayers to pay the tax, interest, and a 10 percent penalty. Tax Attorney did not advise Client of the settlement initiative, and Client missed the deadline. The IRS later launched a second initiative with a 20 percent penalty, and Client learned about it on his own in time to participate. Can Client sue Tax Attorney for failure to advise him of the first settlement initiative? If so, what are his damages? What should Tax Attorney have done to protect against such a claim?

J. Contingent Fee

In 2006, Client invested with a group of other investors in fractionalized interests in mortgages offered by Robando Mortgage Corporation (“Robando”). It turns out that Robando was operating a Ponzi scheme and diverted the investments to other purposes. Client lost his entire investment at the same time he learned about the fraud. Client later heard that other investors had successfully received tax refunds by amending their returns to claim a theft loss deduction. Client hired Tax Lawyer to prepare and file his claim for refund. Having been wiped out by Robando, however, Client could not pay Tax Lawyer’s fees, and therefore Tax Lawyer agreed to charge a contingent fee of 35 percent of the refund claim received. Tax Lawyer filed the refund claim, which was successful, and took his 35 percent fee. A few weeks later, Client learned from one of his investor friends that it was a violation of IRS regulations (Circular 230, 31 C.F.R. §10.27(b)) for Tax Lawyer to have charged a contingent fee. Can Client sue Tax Lawyer?

K. Substantial Authority Opinion

In connection with filing an income tax return, Client retains Tax Lawyer to provide a written opinion supporting a client-favorable position on an uncertain issue on the return. Tax Lawyer provides a substantial authority opinion, which clearly explains what “substantial authority” means. Client does not read the opinion, but takes the position Tax Lawyer advises is supported by substantial authority on the return. Client is audited and following unsuccessful efforts to defend the position with the IRS, files a petition in the United States Tax Court. The case is settled for the tax deficiency plus interest. No penalty is imposed by the IRS. Is Tax Lawyer liable to Client for malpractice? If so, what is the measure of damages? Is the answer different if Client asked for and received the opinion on the issue before entering into the transaction?
L. Tax Shelter Fraud Penalty

Client entered into a tax shelter. The shelter promoter was convicted of multiple counts of aiding and abetting the filing of false returns, including Client’s returns. Although Client was interviewed by the U.S. Attorney’s Office and IRS Special Agents, she was never a subject or target, but merely a witness. Criminal Defense Attorney, who had never handled a tax case before, represented her in the interviews and during the trial. After the criminal case was over, the IRS audited Client’s returns. Criminal Defense Attorney continued to represent Client before IRS. The Revenue Agent issued an RAR proposing disallowance of the losses claimed under the shelter transaction and a fraud penalty of 75 percent. Criminal Defense Attorney did not do any research regarding the fraud penalty or inquire as to the basis for it, but told Client that she should quickly concede the fraud penalty because otherwise she might be prosecuted. Client conceded the penalty, but later hired Tax Attorney, who went back to IRS Appeals and obtained a complete abatement of the fraud penalty because the IRS was not able to carry its burden of proving fraud by clear and convincing evidence. Can Client sue Criminal Defense Attorney for malpractice?

M. Fee Contingent On Transaction Closing

Client desires to sell a business with a large built-in gain, but is reluctant to sell for the offered price in cash because of the large capital gain tax liability that would result. Attorney suggests sale through leveraged partnership structure in order to defer gain recognition. Client is willing to pursue such a transaction on condition that Attorney provide a “should” opinion that deferral of tax on the gain will be achieved. Client enters into an engagement agreement with Attorney calling for Client to pay Attorney a flat fee of $1 million for the “should” tax opinion and other work on the transaction, the fee being conditioned on receipt of the “should” opinion and on the closing of the transaction, which is also conditioned on Attorney providing client the “should” opinion. If the transaction fails to close, the engagement agreement provides that Client will pay fee for Attorney’s services based on Attorney’s standard hourly charges, expected to total less than $300,000. As negotiations proceed with Buyer of business, Client requests changes in the proposed transaction structure that significantly undermine the likelihood that the transaction will achieve the desired tax result. Attorney does not advise Client of this and ultimately provides “should” opinion and the transaction closes. The IRS subsequently audits Client and takes position that gain is recognized immediately. The IRS position and a substantial understatement penalty are upheld by the Tax Court. Does Client have a malpractice claim against Attorney. If so, what is the measure of damages? See Canal Corp. v. Commissioner, 135 T.C. 199 (2010), discussed in Michael B. Lang, Conflicts about Conflicts: Implications of the Tax Court Canal Corp Decision for Disciplinary and Malpractice Actions, 53 BNA Tax Management Memo. 3 (Jan. 2, 2012), available at http://ssrn.com/abstract=1993330, also available at 2012 WL 3115. To purchase the online version of this article, go to www.ali-cle.org and click on “online.”