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**Letter from Edgar D. Brinkerhoff, CPA, of New York, to A. P. Richardson, Secretary, American Institute of Accountants Re: Exception Taken to the Eighth Rule of Professional Conduct Promulgated by the Council of the AIA.**

Edgar D. Brinkerhoff

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R 6/7/17  
No circulars enclosed

CERTIFIED PUBLIC ACCOUNTANT OF N.Y.  
MEMBER OF AMERICAN INSTITUTE OF ACCOUNTANTS

MR. A. P. RICHARDSON, Secretary,  
AMERICAN INSTITUTE OF ACCOUNTANTS,  
20 VESEY STREET,  
NEW YORK, N. Y.

Dear Sir :

It is with trepidation that one contemplates the risks involved in membership in the American Institute of Accountants, in view of the eight rules of professional conduct promulgated by the Council.

Still I heartily give my unqualified approval to every word of every regulation down to the end of the seventh.

But out of the eighth it is impossible to extract any consistent meaning. I might put my own interpretation upon it, but the wording does not assure me that the secretary or the executive committee or the council would accept my rendering.

Whether the order is as bad as it reads, no man can tell. The real rule is the decision that the council will make when sitting as a trial board. Doubtless the committee on professional ethics and the executive committee are prepared to give what they consider to be the council's view. Possibly they have instructed the Secretary as to some of the intent of the eighth rule. I would be glad to get a letter of explanation or to be referred to some outline on professional ethics printed perhaps in the Journal of Accountancy, which I confess stands piled on my desk unread for four years. Or, if the subject is too complex for such treatment, I would be glad of the opportunity to confer with some member of the ethics committee or executive committee or council who can enlighten me as to what I may safely do.

To make the problem clearer, let me state my own case as an example :

I have just finished two cost systems bringing me in \$25000 and \$40000 net respectively. After a rest I will want something more to do. Does this eighth direction allow me anything at all besides "watchful waiting" ?

From its strict reading, I can not see that it does. Under the rule, it seems to be forbidden to broach the subject to a prospective client for fear he may be a client of a member.

Perhaps the Institute will tell me that I have no business to be broaching such subjects to anybody. But such a stand could hardly be taken except on the hypothesis that some one will ask of me "service" or "advice", as in the words of the rule. But is this a reasonable supposition? These two systems occupied me for years and were too absorbing to admit of my keeping in touch with the business world. Will the business world come to me? Will my "watchful waiting" be rewarded? These queries answer themselves and lead direct to the conclusion that the Institute is a good organization to withdraw from to avoid starving to death. The ethics of this profession nearly brought me to beggary at one time and I do not wish to try it again. I can find plenty of instances in my career when adherence to the ethical requirements of the profession have compelled me to allow wealth to pass me by, have constrained me to refuse nice jobs that belonged to my principal, and so on; but there seems to be no offset, I can not trace a single dollar of income to my membership in any accounting association. The situation is apparently one-sided.

I have been told that I may put my name in the directory; but this is small comfort in view of the fact that it has been there for twenty years without exciting even one inquiry to say nothing of bringing one of those "askings" mentioned in the rule.

This is plain talk, but unless I speak my mind and relate the difficulties created by the rule, the Institute can not know my apprehensions well enough to give me comprehensive advice.

It is to be hoped that the management of the Institute has a better answer than I can guess, but so far I confess my inability to fathom this curiously worded regulation.

Is the rule directed against the very principle of soliciting? If so, is not the Institute un-American in its policy? Think of a free country without soliciting or advertising! No sounder business principle can be conceived. The public want it. They want things brought to them. The business public are in the habit of being appealed to. A business and a profession differ, but not to the extent that a professional must hide his head under a bushel. Under Socialism soliciting and advertising cease, but I hope that the Institute is not inclined to encourage that tendency.

Even if soliciting and advertising are reprehensible in some branches of the legal and medical professions, the accountancy vocation must resort to invitation, advocacy, importunity, pressing, urging, adjuration, for the reason that the average commercial man is not aware of his need of an accountant. Solicitation is necessary to his salvation.

If this eighth law is intended to pronounce against soliciting as a principle, how is it that it is such good form to solicit a job from a busy accountant or accountant firm.

And I am half inclined to inquire whether the first accountants or accountant firms did not resort to solicitation of clients at the start at least indirectly.

Assuming, then, that soliciting is not of itself wrong, it must be that there are two kinds, good and bad.

Can it be possible that the Institute is edging toward a system by which accountants apply to (solicit) the Institute for new business? This solution is suggested by the relations of the Institute and the committee of national defense to the United States Government and the United States Council of National Defense, and by the fact of the April 3rd letter of President Davies to the members. I am finding no fault, but looking for light. Evidently, soliciting through the Institute is a specimen of the *good* variety. (Although in this connection the question arises whether all members would stand an even show, or an opportunity commensurate with their several abilities.)

Again, the rule seems to distinguish between soliciting the clients of members and soliciting the clients of non-members, calling the former a bad form of soliciting and the latter a good form. Not only do I want to know the meaning of the rule, but I want to know also whether it is just. For the "life of me" I can not see any more wickedness in approaching a client of a member than in approaching a client of a non-member. The non-member is a human being, and the moral law applies to our relations with him as well as to our relations with members. I could understand the rule better if the soliciting of *any* accountant's clients had been interdicted instead of singling out the soliciting of members' clients.

Still again, there are concerns who are nobody's clients, as they have never employed an accountant. Although the rule says nothing specifically about soliciting these, yet, in charging against soliciting members' clients, an obstacle seems to be placed in the way of doing anything to cultivate this verdant field. How is one to know which concerns employ member accountants, which employ non-member accountants, and which employ no accountant? Is the Institute ready to back the strict interpretation of the rule that would render a member amenable to discipline for making a mistake and "going after" the wrong concern?

If the doctrine laid down were that a member must not look for work, I could understand that; but the doctrine that a member must not solicit a client because he might already be a client of a member is hard to understand. For instance, a great bank can hardly avoid employing more than one accountant or accountant firm. Then why not permit a member to approach a bank, if soliciting itself is no sin?

Indirectly is a strong word. If language means anything, I may not send my card to a corporation (nor even put my name in a directory as an accountant) for fear that it will be seen by a client of one of our honorable members. I must not allow myself to be introduced by anybody to anybody for fear that some Institute member will hear of it and bring to the ethics committee or the executive committee a complaint of lobbying.

One would think that the great object of the rule was to prevent members from getting clients and to prevent clients from getting members or from making a change. I know of some changes that would be a good thing. A biennial change of auditors is not bad.

What is the answer? Am I to be told that a client is *not* a member's client if the work is being done by an accountant firm even if every partner is a member? Or, am I to be told that a client *is* a member's client when the accountant firm puts the work in charge of an Institute member in its employ or who is a partner?

Just at this point, let me call your attention to bad grammar in rule Number One. The rule tells how a firm may describe itself if all the partners are Institute members, and how a firm must not describe itself if not a single partner is an Institute member; but it does not tell how a firm may describe itself if some of the partners are Institute members and others are not. It attempts to, but the language of the third and fourth lines stands in the way.

Rule One says that an accountant firm can not be a member, but it does not settle the question whether the firm's clients are member's clients.

Peradventure the Institute does not care anything about soliciting or advertising as a principle, but is only aiming against competition among members. Perhaps, in the minds of those by whom this eighth precept was formulated, the desideratum was to protect members from one another's competition.

But why stop this internal competition? It is a matter of so very little consequence in a field so vast. There is room enough for all accountants for a century to come. Cut-throat competition could not possibly enter in. Leave this matter alone, and nothing worse will result than good wholesome emulation among independent accountants.

Besides, what accountant desires protection? Answer, not those who do good work.

At any rate, it hardly appears needful to make a special rule to cover this subject. A competent, self-reliant accountant ought to be willing to endure any encroachment upon his business that is not answerable to the common law. A fair field and no favor!

It seems to me that the designers of this Order in Council got things mixed. In their laudable effort to protect the accountant firm from the depredations of an unprincipled employee, who would be so ungrateful as to sever connections and carry away valuable business notwithstanding the great benefits he had received in years of training in an accountant's office, the framers of this rule have broadened its wording to cover general competition among independent accountants.

It is a question whether this effort to regulate competition among independent accountants does not necessarily end in creating a monopoly. What will the public think of us when they find this out? It is no favor to business concerns to make it difficult for them to pick out an accountant. This system means that the would-be clients do their share of the starving.

It is one thing to denounce the disloyalty of employees, but it is quite another thing so to restrict the independent accountant as to discourage young men from becoming students for entering the profession. The employee of an accountant firm withdraws and sets up an office for himself and tries to become an independent accountant. Let him reject any offers of business on the part of his old employers' clients. Very good. But why go further and bar him out from all the rest of the world besides?

All the other rules of the council purpose bringing accountancy over from a business to a profession, and rightly so; but can it be possible that the makers of this eighth canon had in mind only the conservation of the business of the old established firms? If so, I predict that the old established firms will feel too proud to fight it out on this line and will eventually protest that they do not need and will not accept any such charity.

Anyhow, any regulation that builds up accountancy conducted as a business moves us further away from accountancy practiced as a profession.

It would seem that, in both the anti-soliciting idea and the anti-internal-competition idea we have the disappointing paradox that, while the ethical rules of accountancy organizations are of great benefit to some portions of the membership, they are nearly fatal to the interests of the other members. The only justification of such a state of affairs would be that the man without a clientele is necessarily the inferior accountant in technical ability. Is there any reason to believe that such is the case? Will the public of itself gravitate to superior accountants if solicitation is prohibited?

Instead of the picayune aims of this rule, suppose it were banished into outer darkness and a regulation substituted tending to compel good work on the part of accountants. Here is something

worthy of a great institute. Here is something to rescue accountancy from its current disrepute. I have sometimes been obliged to undo the work of accountants standing high in the present councils of the Institute. No doubt others have had similar experiences. In one instance, a cost system so installed under which the concern lost money for many years had to be discarded for better work, under which millions have been made. One tenth of the effort put forth to stifle competition, would weed out those members whose work is never good enough to be reflected in the profit and loss account.

In all innocence and ignorance, I have at certain times past used the enclosed five circulars. If the Institute objects to such method, I would like to know it.

I would be glad to be informed how soon I may expect to be put in possession of an authoritative oral or written statement of the attitude of the Institute toward the questions raised in this letter.

Yoorz trooli,  
EDGAR D. BRINKERHOFF.  
1917, May 7.