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Lawyers and certified public accountants: a study of interprofessional relations

National Conference of Lawyers and CPAs (U.S.)

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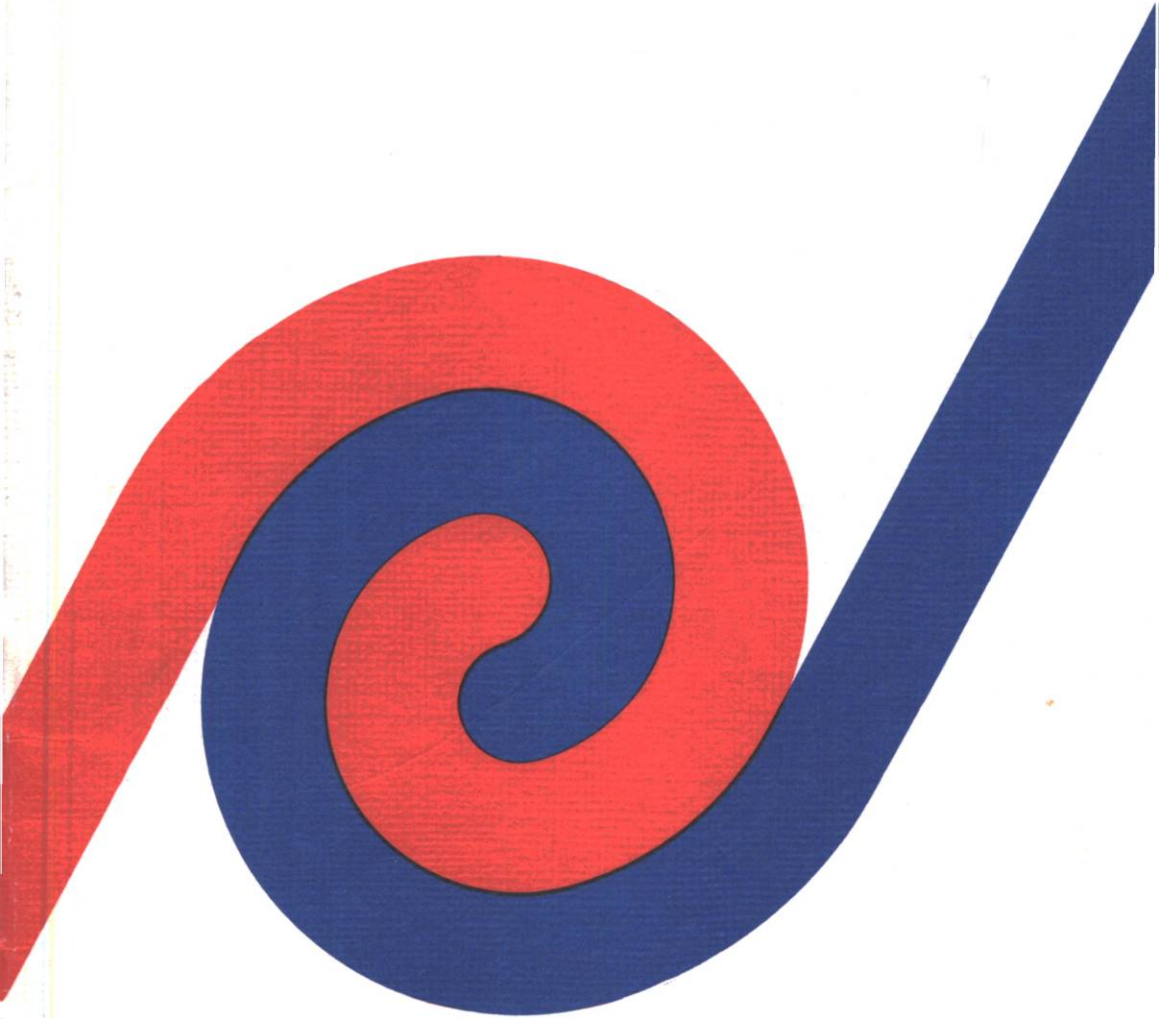
Recommended Citation

National Conference of Lawyers and CPAs (U.S.), "Lawyers and certified public accountants: a study of interprofessional relations" (1976). *Guides, Handbooks and Manuals*. 834.

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**Lawyers and
Certified Public
Accountants:**
A Study of
Interprofessional
Relations



Lawyers and Certified Public Accountants: A Study of Interprofessional Relations

**A Statement Prepared by the Members of the
National Conference of Lawyers and CPAs**

Distributed by the
American Bar Association
and the
American Institute of Certified Public Accountants

October 1976

Preface

This publication is respectfully dedicated to all lawyers and all certified public accountants with the hope that it will help them to collaborate with better mutual understanding in the service of their clients and in the public interest.

It is published jointly by the American Institute of Certified Public Accountants and the American Bar Association, through the agency of the National Conference of Lawyers and Certified Public Accountants. The Conference consists of representatives appointed by the presidents of the two national organizations. For more than thirty years it has engaged in meetings and in continuous year-round communication for the purpose of promoting cooperation between the two professional groups.

The objective of the publication is to tell lawyers something about the professional responsibilities of CPAs—and to tell CPAs something about the professional responsibilities of lawyers.

Many members of both professions already know much about each other from day-to-day working relationships. They know the kinds of contributions they can make on their own to further the public interest. They also know how—and when—by working together they can better accomplish their objective. On the other hand, there are some lawyers and CPAs who are not so well informed.

There are, at present and on the horizon, new developments such as continuing education, advertising, and the specialization of practice. The efforts of this Conference and similar efforts on the state level between state and local bar associations and state societies of CPAs should insure the continuation of the high level of cooperation between the two professions and the realization of our ultimate objective—the best possible service to our clients and the public.

It is hoped that both groups will find this publication useful. For the informed, it may point up ways of promoting greater understanding among all lawyers and CPAs. For the others, it may open up new vistas of understanding and fellowship.

*The National Conference of Lawyers
and Certified Public Accountants*

October 1976

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The National Conference

Naturally enough when skills overlap to some extent, as in the case of lawyers and CPAs, problems may arise.

At the national level, there was a time when the American Bar Association and the American Institute of Certified Public Accountants were in genuine disagreement over questions of the jurisdiction and scope of the two professions, particularly in the field of federal taxation. Happily, this has long gone by.

More than thirty years ago the American Bar Association and the American Institute of Certified Public Accountants established the National Conference of Lawyers and Certified Public Accountants to promote cooperation between the professions and to mediate disputes about what is properly the practice of law and what is properly that of accounting. In this time the National Conference has witnessed the development of the most cordial and harmonious relationships.

Statements of Principles

This desirable state of affairs has built up gradually, particularly since 1951 when, through the efforts of the National Conference, the ABA and the AICPA adopted a Statement of Principles Relating to Practice in the Field of Federal Income Taxation for the guidance of members of each profession.

Without presuming to define the practice of law or accounting, the Statement contains guides regarding the role of lawyers and CPAs in the area of taxation. It urges collaboration between the two professions in the best pub-

lic interest, it recommends that services and assistance in federal income tax matters be rendered by qualified lawyers and CPAs, it counsels them to avoid conflict, and it highlights the beneficial effects of education and persuasion. The full text of the 1951 Statement is contained in Appendix A, page 15.

Frequent reference to this Statement is recommended to members of both professions. To this day, it stands as an excellent example of what two related professions can do working together. Although limited by its terms to federal income taxation, much of the text and spirit of the Statement is applicable to other situations.

In 1975 the ABA and the AICPA approved the Statement of Principles in Estate Planning that had been promulgated by the National Conference of Lawyers and Certified Public Accountants. Its principal purpose is to indicate the importance of voluntary cooperation between the legal and accounting professions, whose members should use their knowledge and skills to the best advantage of the public. It urges cooperation between the two professions in estate planning; it counsels CPAs becoming involved in this area permeated by legal problems to advise clients that it is necessary to engage the services of an attorney at an early stage; it counsels lawyers to recognize that a CPA may play an important role in the planning process and, in such event, to recommend that he or she be engaged at an early stage. The full text of the Statement of Principles in Estate Planning is contained in Appendix B, page 20.

The excellent relations which exist at the national level generally appear to exist also at the state and local levels. The results of surveys undertaken by the Conference reveal that there are joint conferences of lawyers and CPAs in a number of states and in some cities and that they too operate with increasing understanding. Where such conferences exist, occasional regular meetings to discuss programs and progress have improved relationships far better than meetings hastily convened only when disagreement already has arisen.

Among individual practitioners, however, spoken and unspoken criticisms persist. Individual members of one

profession may believe that certain members of the other are doing professional work in areas where they do not qualify by training and experience. It is particularly in such cases that we hope this publication will offer assistance. Sometimes the criticisms are well founded, and in such cases lawyers and CPAs should learn to alter their practices and policies. But in many more cases, a better comprehension by CPAs of what lawyers are supposed to do and a better comprehension by lawyers of what CPAs are supposed to do will eliminate problems.

Professional Services of Lawyers and CPAs

Lawyers and CPAs: Common Attributes

Some understanding of another's professional work and an appreciation of his or her competence in the particular discipline are vital to good business and personal relations. Lawyers and CPAs are members of learned professions. Each discipline requires long periods of general education and professional study, culminating in qualifying examinations. Each has a specific code of ethics and disciplinary procedure to enforce the codes. Each demands high integrity and competence.

What Is a CPA?

The CPA members of the National Conference endeavor to answer the question, "What is a CPA?"

A certified public accountant is a person trained and expert in accounting who has passed a uniform examination and, by this demonstration of competency and by meeting other requirements, has been certified as such by a state board.

There are approximately 175,000 CPAs in the United States, 135,000 of whom are members of the American Institute of Certified Public Accountants. In addition to certified public accountants who engage in public practice, there are many in corporate employment, government, and teaching.

The work of the CPA can be classified broadly as accounting, auditing, tax services, and management advisory services. The increasing public interest in the professional practice of certified public accountants has pointed up the need for a conceptual description of the nature of CPA services. Recognizing this, the Council of the American Institute of Certified Public Accountants, its governing body, has approved A Description of the Professional Practice of Certified Public Accountants, which is summarized in the next several paragraphs.

Accounting is a discipline which provides financial and other information essential to the efficient conduct and evaluation of the activities of any organization.

The information which accounting provides is essential for (1) effective planning, control, and decision making by management, and (2) discharging the accountability of organizations to investors, creditors, government agencies, taxing authorities, association members, contributors to welfare institutions, and others.

Accounting includes the development and analysis of data, the testing of their validity and relevance, and the interpretation and communication of the resulting information to intended users. The data may be expressed in monetary or other quantitative terms, or in symbolic or verbal forms.

Some of the data with which accounting is concerned are not precisely measurable, but necessarily involve assumptions and estimates as to the present effect of future events and other uncertainties. Accordingly, accounting requires not only technical knowledge and skill but, even more important, disciplined judgment, perception, and objectivity.

CPAs have a distinctive role in examining financial statements submitted to investors, creditors, and other interested parties, and in expressing independent opinions on the fairness of such statements. This distinctive role has inevitably encouraged a demand for the accounting opinions of CPAs on a wide variety of other representations, such as compliance with rules and regulations of government agencies, sales statistics under lease and roy-

alty agreements, and adherence to covenants in indentures.

The examination of financial statements requires CPAs to review many aspects of an organization's activities and procedures. Consequently, they can advise clients of needed improvements in internal control and make constructive suggestions on financial, tax, and other operating matters. An important part of the CPAs' service to clients includes the accounting aspects of tax planning and preparation of tax returns.

In addition to furnishing advice in conjunction with their independent examinations of financial statements, CPAs are engaged to provide objective advice and consultation on various management problems. Many of these involve information and control systems and techniques, such as budgeting, cost control, profit planning, internal reporting, automatic data processing, and quantitative analysis. CPAs also assist in the development and implementation of programs approved by management. However, CPAs do not give legal advice or make management decisions.

The complexities of an industrial society encourage a high degree of specialization in all professions. The accounting profession is no exception. Its scope is so wide and varied that many individual CPAs choose to specialize in particular types of service.

What Is a Lawyer?

The lawyer members of the National Conference endeavor to answer the question, "What is a lawyer?"

A lawyer is a person trained and expert in law who has passed the bar examination¹ and has, by this demonstration of competency and by meeting other requirements, been admitted to the bar. Once admitted to the bar, the

¹This does not apply to graduates of law schools in two states.

lawyer becomes an officer of the court subject to the disciplinary powers of the court.

There are approximately 450,000 lawyers in this country. Most of them are members of the state and local bar associations and approximately half of them are members of the American Bar Association. In addition to lawyers who engage in public practice, there are many in corporate employment, government, and teaching.

A lawyer is trained and experienced in the rules regulating relationships of people with each other and with all kinds of property. Organized society, whether it be a family, a tribe, a village, a city, a state or nation, and now even the world, must have rules by which people individually and collectively can try to live harmoniously with each other.

People own and drive automobiles, acquire and dispose of houses, furnishings, and physical assets, deal with pieces of paper such as corporate stock, get married and divorced, enter into all kinds of contracts, sign deeds and wills and agreements, sue and get sued, are arrested or fear arrest, join organizations and become involved with meetings and bylaws, and hundreds of other things, all of which involve these rules of law. In many of these situations there are also economic and financial considerations and rules which concern the lawyer, and may also concern the certified public accountant.

There are some legal situations in which a lawyer is usually not needed, such as the simple cash purchase of merchandise (a "contract") or the routine disposition of a ticket for overtime parking. But sometimes the very simple and innocent written contract, such as the purchase of personal property on the installment plan, may become a very complicated legal matter, even though most people have no legal advice when they sign on the dotted line. Many people who should have legal services do not seek or cannot obtain the same although increasing efforts by bar associations through lawyer-referral services and otherwise, legal aid societies, government agencies, and others are trying to fill this need, especially for the poor.

Many people think of the lawyer only as the person who

represents others in court. This is probably the smallest part of the activity of most lawyers. Even those whose principal work is involved in litigation generally spend much more time negotiating settlements than they do trying cases. Through the centuries the lawyer has been the business and personal adviser to many people, not only when they are already in trouble, but much more often when they seek guidance to handle transactions properly and to keep out of trouble. Most lawyers spend much more time and effort keeping people out of court than getting them out of court. The scope of the law is so wide and varied that many lawyers choose to specialize in particular areas of the law.

Traditionally the lawyer has been the long-time family and business friend to whom clients turn for advice and help with their problems and troubles, some of which have little to do with the strict rules of law. In recent years this function of the lawyer as the personal adviser, especially in business situations, is often paralleled by a similar function of the CPA. It is perhaps in this respect that the greatest need and opportunity for collaboration exist.

Law is the sometimes imperfect tool developed by an organized society of imperfect people who frequently do not agree on what constitutes justice. The lawyer often deals in broad concepts that are sometimes full of doubt and uncertainty and are not susceptible of precise definition. The practice of law has sometimes been called the pursuit of justice. In some ways this is like the "pursuit of happiness," a continuing quest.

Dual Practice of Law and Accounting

In some cases law school graduates, who are sometimes members of the bar, are also employees of or partners in accounting firms. These individuals are either CPAs or are preparing to take the CPA examination, and they do not practice law or hold themselves out as attorneys. Likewise there are CPAs who are law school graduates and are

associates of or partners in law firms who do not engage in the practice of accounting.

It is altogether appropriate for a lawyer with accounting training to use that skill to be a better lawyer, or for a CPA who has legal training to use that training to be a better accountant.

While it is proper for an individual to engage in practice simultaneously as a lawyer and as a CPA, that person must comply with all of the provisions of each profession's ethical precepts. Further, a CPA in public practice who is also an attorney providing legal services to a client may, under the Code of Professional Conduct of the AICPA, be prohibited from expressing an opinion on the financial statements of that client if he or she is not considered to be "independent."

Lawyers and CPAs Working Together

Collectively, lawyers and CPAs provide service which cuts across almost every facet of human endeavor. It is no accident, then, considering the interrelationship of financial and legal aspects of our society, that lawyers and CPAs are often concerned with similar problems, although perhaps viewed from different perspectives.

We believe there are many opportunities for lawyers and CPAs to collaborate in the best interests of their clients. Examples of the areas in which collaboration is likely to be fruitful would include the following: estate planning, tax matters, business insolvency matters, bankruptcy proceedings, legal actions involving accounting matters, establishing and terminating a business, business incorporations and liquidations, mergers, reorganizations, sales and purchases of a business, personal financial management, compensation planning, labor matters, insurance losses, and SEC registration.

Maintaining Good Interprofessional Relations

As stated earlier, this publication is intended to help lawyers understand better what the accounting profession is and what CPAs do, and to help CPAs understand better the profession of law and what lawyers do. Obviously, the reader can further that purpose by direct personal contact and discussion with members of the other profession. We believe that all CPAs and all lawyers will be better able to serve their own clients if they make an affirmative effort to obtain information and education from their friends in the other field.

This can be especially useful if it occurs in situations in which both professions are already involved, or ought to be involved. While lawyers and CPAs often work together, too often they work separately when they ought to collaborate. Failure to do so is often a matter of inertia or lack of time, even though the wisdom of seeking help from the other profession is obvious.

Every lawyer or CPA brought into a matter should determine at an early stage whether the talent and training of a member of the other profession are needed and should make appropriate recommendations to his or her client. At the beginning of any such engagement, we recommend strongly that lawyers and CPAs discuss with each other and the client what each will be expected to do and be responsible for, and how each will report to and confer with the client and the other. An analysis of things to be done and who will do them should produce better results for the client and avoid misunderstandings. If specific

problems arise with incipient or actual misunderstandings, the lawyer and CPA involved should confer and resolve them promptly.

The National Conference of Lawyers and Certified Public Accountants is making plans to encourage more active discussion and communication between state and local bar associations and state societies of CPAs and their local counterparts. The Conference stands ready to counsel with or otherwise assist state and local groups to initiate such discussions. Meanwhile, they are urged to initiate or increase efforts for organized group education, discussion of professional problems, and generally intensified inter-professional communication.

In an increasingly complex world, it is imperative that practitioners not only endeavor to keep abreast of developments in their own profession but also make use of the talents of members of the other profession in matters which require the best that well-qualified CPAs and lawyers can provide.

Appendix A

Statement of Principles Relating to Practice in the Field of Federal Income Taxation¹

*Promulgated by the National Conference of
Lawyers and Certified Public Accountants*

Preamble. In our present complex society, the average citizen conducting a business is confronted with a myriad of governmental laws and regulations which cover every phase of human endeavor and raise intricate and perplexing problems. These are further complicated by the tax incidents attendant upon all business transactions. As a result, citizens in increasing numbers have sought the professional services of lawyers and certified public accountants. Each of these groups is well qualified to serve the public in its respective field. The primary function of the lawyer is to advise the public with respect to the legal implications involved in such problems, whereas the certified public accountant has to do with the accounting aspects thereof. Frequently the legal and accounting phases are so interrelated and interdependent and overlapping that they are difficult to distinguish. Particularly is this true in the field of income taxation where questions

¹As adopted in 1951.

of law and accounting have sometimes been inextricably intermingled. As a result, there has been some doubt as to where the functions of one profession end and those of the other begin.

For the guidance of members of each profession the National Conference of Lawyers and Certified Public Accountants recommends the following statement of principles relating to practice in the field of federal income taxation:

1. Collaboration of Lawyers and Certified Public Accountants Desirable. It is in the best public interest that services and assistance in federal income tax matters be rendered by lawyers and certified public accountants, who are trained in their fields by education and experience, and for whose admission to professional standing there are requirements as to education, citizenship and high moral character. They are required to pass written examinations and are subject to rules of professional ethics, such as those of the American Bar Association and American Institute of Certified Public Accountants, which set a high standard of professional practice and conduct, including prohibition of advertising and solicitation. Many problems connected with business require the skills of both lawyers and certified public accountants and there is every reason for a close and friendly cooperation between the two professions. Lawyers should encourage their clients to seek the advice of certified public accountants whenever accounting problems arise and certified public accountants should encourage clients to seek the advice of lawyers whenever legal questions are presented.

2. Preparation of Federal Income Tax Returns. It is a proper function of a lawyer or a certified public accountant to prepare federal income tax returns.

When a lawyer prepares a return in which questions of accounting arise, he should advise the taxpayer to enlist the assistance of a certified public accountant.

When a certified public accountant prepares a return in which questions of law arise, he should advise the taxpayer to enlist the assistance of a lawyer.

3. Ascertainment of Probable Tax Effects of Transactions. In the course of the practice of law and in the course of the practice of accounting, lawyers and certified public accountants are often asked about the probable tax effects of transactions.

The ascertainment of probable tax effects of transactions frequently is within the function of either a certified public accountant or a lawyer. However, in many instances, problems arise which require the attention of a member of one or the other profession, or members of both. When such ascertainment raises uncertainties as to the interpretation of law (both tax law and general law), or uncertainties as to the application of law to the transaction involved, the certified public accountant should advise the taxpayer to enlist the services of a lawyer. When such ascertainment involves difficult questions of classifying and summarizing the transaction in a significant manner and in terms of money, or interpreting the financial results thereof, the lawyer should advise the taxpayer to enlist the services of a certified public accountant.

In many cases, therefore, the public will be best served by utilizing the joint skills of both professions.

4. Preparation of Legal and Accounting Documents. Only a lawyer may prepare legal documents such as agreements, conveyances, trust instruments, wills, or corporate minutes, or give advice as to the legal sufficiency or effect thereof, or take the necessary steps to create, amend, or dissolve a partnership, corporation, trust, or other legal entity.

Only an accountant may properly advise as to the preparation of financial statements included in reports or submitted with tax returns, or as to accounting methods and procedures.

5. *Prohibited Self-Designations.* An accountant should not describe himself as a “tax consultant” or “tax expert” or use any similar phrase. Lawyers, similarly, are prohibited by the canons of ethics of the American Bar Association, and the opinions relating thereto, from advertising a special branch of law practice.²

6. *Representation of Taxpayers Before Treasury Department.* Under Treasury Department regulations lawyers and certified public accountants are authorized, upon a showing of their professional status, and subject to certain limitations as defined in the Treasury rules,³ to represent taxpayers in proceedings before that Department. If, in the course of such proceedings, questions arise involving the application of legal principles, a lawyer should be retained, and if, in the course of such proceedings, accounting questions arise, a certified public accountant should be retained.

7. *Practice Before the Tax Court of the United States.* Under the Tax Court rules nonlawyers may be admitted to practice.

However, since upon issuance of a formal notice of deficiency by the Commissioner of Internal Revenue a choice of legal remedies is afforded the taxpayer under existing law (either before the Tax Court of the United States, a United States District Court, or the Court of Claims), it is in the best interests of the taxpayer that the advice of a lawyer be sought if further proceedings are contemplated. It is not intended hereby to foreclose the right of nonlawyers to practice before the Tax Court of the United States pursuant to its rules.

Here also, as in proceedings before the Treasury Department, the taxpayer, in many cases, is best served by the

² Except to the extent that, since the adoption of this Statement in 1951, certain states, by law or authorized professional regulation, have permitted lawyers to hold themselves out as tax specialists.

³ See Treasury Circular 230 and Public Law 89-332 (November 8, 1965).

combined skills of both lawyers and certified public accountants, and the taxpayers, in such cases, should be advised accordingly.

8. Claims for Refund. Claims for refund may be prepared by lawyers or certified public accountants, provided, however, that where a controversial legal issue is involved or where the claim is to be made the basis of litigation, the services of a lawyer should be obtained.

9. Criminal Tax Investigations. When a certified public accountant learns that his client is being specially investigated for possible criminal violation of the Income Tax Law, he should advise his client to seek the advice of a lawyer as to his legal and constitutional rights.

Conclusion. This statement of principles should be regarded as tentative and subject to revision and amplification in the light of future experience. The principal purpose is to indicate the importance of voluntary cooperation between our professions, whose members should use their knowledge and skills to the best advantage of the public. It is recommended that joint committees representing the local societies of both professions be established. Such committees might well take permanent form as local conferences of lawyers and certified public accountants patterned after this conference, or could take the form of special committees to handle a specific situation.

Appendix B

Statement of Principles¹ in Estate Planning

*Promulgated by the National Conference of
Lawyers and Certified Public Accountants*

Preamble. Lawyers are authorized to engage in all aspects of estate planning and certified public accountants also have a role in various aspects of estate planning. Without presuming to define or expand upon the meaning of the terms “the practice of law” or “the practice of accounting,” the National Conference of Lawyers and Certified Public Accountants believes that a statement of principles in estate planning is appropriate:

To provide for the public interest;

To promote the best and most effective relations between lawyers and CPAs; and

To continue to encourage the highest degree of performance of each profession in its respective field.

Therefore, the National Conference has adopted the following statement of principles in estate planning:

1. When a client is served by both a lawyer and a certified public accountant, a good working relationship between both professionals should be established at the earliest time practicable in order to provide the client with the best possible service at a fair cost.

¹ As adopted in 1975.

2. When a certified public accountant becomes involved in estate planning, the client should be advised that it is necessary to engage the services of a lawyer at an early stage, since legal problems permeate the entire estate planning process and only the lawyer may give legal advice and prepare legal documents.

3. When a lawyer becomes involved in estate planning, he should recognize that a certified public accountant may play an important role in the planning process, and, in such event, should be engaged at an early stage.

These principles do not change the authorized activities of either lawyers or CPAs in tax matters.

(This Statement of Principles should be regarded as subject to revision and amplification in light of future experience.² The principal purpose is to indicate the importance of voluntary cooperation between the legal and accounting professions whose members should use their knowledge and skills to the best advantage of the public.)

² It is anticipated that the Conference will implement, expand, and where appropriate, interpret its statements of principles.

