

Matter for 'Know Your Ethics' – October, 2014 issue of the CA Journal

Q. Can a Chartered Accountant in practice solicit professional work by making roving enquiries?

A. No, it is not permissible for a member to address letters or circulars to persons who are likely to require services of a Chartered Accountant. It would tantamount to advertisement (as per para (g) under clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 of Code of Ethics, 2009).

Q. Whether member in practice is permitted to respond to announcement for empanelment for allotment of audit and other professional work and quote fees on enquiries being received?

A. It has been clarified by the Council under proviso (ii) to clause (6) of the part-I of the First schedule of the Chartered Accountants Act, 1949 that if announcements are made for empanelment by the Government, Corporations, Courts, Cooperative Societies, Banks and other similar institutions, the members may respond to such announcements provided the existence of panel is within their knowledge. The Council has further clarified that the quotations of fees can be sent, if enquiries are received by the members in this regard.

Q. Whether Companies in which Chartered Accountants have been appointed as directors on their Board can publish description about the Chartered Accountant's expertise, specialization and knowledge in any particular field or add appellations or adjectives to their names in the prospectus or public announcements issued by these companies?

A. The Council's attention has been drawn to the fact that more and more companies are appointing Chartered Accountants' as directors on their Boards. The prospectus or public announcements issued by these companies often publish descriptions about the Chartered Accountants' expertise, specialization and knowledge in any particular field or add appellations or adjectives to their names. Attention of the members in this context is invited to the provisions of Clause (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. In order that the inclusion of the name of a member of the Institute in the prospectus or public announcements or other public communications issued by the companies in which the member is a director does not contravene the above noted provisions, it is necessary that the members should take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not

directly or indirectly amount to solicitation of clients for professional work by the member. While it may be difficult to lay down a rigid rule in this respect, the members must use their good judgement, depending upon the facts and circumstances of each case to ensure that the above noted provisions are complied with both in letter and spirit. It is advisable for a member that as soon as he is appointed as a director on the Board of a company, he should specifically invite the attention of the management of the company to the aforesaid provisions and should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him.

Q. What is the professional or other misconduct?

A. Section 22 of the Chartered Accountants Act, 1949 defines professional or other misconduct as follows :-

“For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

What constitutes ‘misconduct under any other circumstances’ has to be determined on case to case basis keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct. Following are few examples of ‘misconduct under any other circumstances’ by a member :-

1. Conviction by a competent Court for an offence involving moral turpitude punishable with imprisonment or for an offence not of a technical nature committed by a member in his professional capacity.
2. Retention of books and documents of the client and failure to return these to the client on request without a reasonable cause.
3. Material misrepresentation e.g. misrepresenting to a firm, while seeking employment as an accountant, that he has worked for three years as a senior assistant with another firm.
4. Publishing an advertisement in a newspaper with malafide intention to malign any person.
5. Using objectionable, derogatory and abusive language or/and making irrelevant, incoherent irresponsible and insane statements in his correspondence with a person.

Q. Can a member in practice indicate in a book or an article, authored/contributed/published by him, his association with any firm of Chartered Accountants?

A. No, as per Para (e) under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 as appearing in the Code of Ethics, 2009 a member is not permitted to indicate in a book or an article, authored/contributed/published by him, the association with any firm of Chartered Accountants.

Q. Can a Chartered Accountant in practice seek professional work from his professional colleagues?

A. Yes, in terms of proviso (i) of Clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949, a member is permitted to apply or request for or to invite or to secure professional work from another Chartered Accountant in practice.

The issue of advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever is in violation of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. However, classified advertisement in the Journal/Newsletter of the Institute is permissible in this regard. A member is permitted to issue a classified advertisement in the Journal/Newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and E-mail address.

Q. A Chartered Accountants firm issued circulars to the non- clients that a Chartered Accountant who was the former partner in-charge of Taxation of one of the largest accounting firms of the world, had joined them as partner. Can they do it? (Case Study)

A. No, Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits solicitation of clients or performing work either directly or indirectly by circular, advertisement, personal communication or interview or by any "other means". The issuance of circular to persons who are not clients but may likely requires services of a chartered accountant would tantamount to advertisement since it is solicitation of professional work by making roving enquiries. As per Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the usage of the words "one of the largest accounting firms of the World" and the specification of specialization in "taxation" would also amount to advertisement and, thus, constitute professional misconduct.

Q. Whether the word "Chartered Accountants" and name of city after the name of the members of the Institute be mentioned in the articles contributed by such members and published in the Institute's Journal?

A. Yes, under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, there is no restriction in the Code of Ethics for

mentioning the word "Chartered Accountant" and also the name of city in an article contributed by a member in the Institute's Journal as well as in newspapers and other periodicals.

Q. Whether the information contained in the website of the Chartered Accountants and/or Chartered Accountants' firms can be circulated on their own or through e-mail or by any other mode or technique?

A. Sub-para (3) & (4) of Para (m) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 as appearing in the Code of Ethics, 2009 prescribes that the Chartered Accountants and/or Chartered Accountants' firms should ensure that none of the information contained in the website be circulated on their own or through e-mail or by any other mode or technique except on a specific "pull" request. The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.
