



## **Code of Professional Conduct**

Last Revised: May 11, 2015

Adopted: May 12, 2015

## **Purpose of the Code of Professional Conduct**

This Code is to communicate the minimum standard of conduct expected for captive professionals in North Carolina. This is an aspirational code, which has been designed to reinforce the high level of ethical standards expected of those involved with and operating captive insurance companies in North Carolina. This ethical code has been developed to provide guidelines regarding the ethical formation and operation of captive insurance companies for the benefit of the client, other members of various professions, and to society at large.

## **Components of the Code**

The Code contains both canons and commentary. The canons are designed to give captive professionals in North Carolina sensible guidance of ethical standards and conduct. The comments are designed to give additional explanation for the canons. Advisory letter opinions are available from the Ethics Subcommittee of the North Carolina Captive Insurance Association for captives seeking additional guidance on code interpretation.

## **Advisory Opinions**

If a substantial question of ethical conduct arises, members of the North Carolina Captive Insurance Association may request an advisory opinion from the ethics subcommittee. The ethics subcommittee is a 7 member board, chaired by a member of the Board of Directors of the North Carolina Captive Insurance Association. The subcommittee contains professionals from various facets of the captive industry. The ethics subcommittee is responsible for drafting and approving the code of conduct, as well as providing advisory opinions regarding the interpretation of the code of conduct. These advisory opinions may be either published or unpublished. Unpublished opinions are informal letter opinions which are limited to one particular circumstance for which the opinion was requested. In contrast, a published advisory opinion is intended to be used and applied to all members of the captive community in North Carolina.

## **Canon 1**

Captive insurance professionals should continually and regularly improve their skills and competence, as professional competency relates to captive insurance or risk management.

### **Comment**

Unlike medicine, accounting, the law, or more established arms of the insurance industry, there is little professional credentialing or widely-held professional designations for captive insurance professionals. Captive professionals should regularly continue their professional education as it relates to the relevant topics of captive formation, administration, management, and termination.

Many captive professionals will be independently required to obtain continuing education credits, either from bar associations, a state board of Certified Public Accountants, or to maintain

existing insurance credentials. For those captive professionals, they should seek continuing education credits in their primary profession which will also enhance their captive insurance knowledge.

All captive professionals shall also seek to continue their informal captive education by a combination of being members of trade groups, reading industry publication, attending conferences, attending webinars, and generally maintaining awareness of trends within the industry. It is the captive professional's own responsibility to determine which type of continuing education best fits with their role within the profession.

## **Canon 2**

Captive professionals must not willfully violate any laws or regulations, in both their personal conduct and in their advice to clients. Captive professionals should be familiar with the laws of the domiciles where they advise clients and operate captives, as well as applicable federal law. Captive professionals should avoid conduct or activities that are reasonably certain to cause unjust harm to others.

### **Comment**

The captive professional is a trusted advisor and an individual who may be called upon to personally handle significant sums of money or direct the financial affairs of a client. In these roles, the captive professional must adhere to the utmost in good faith. Because of the significant trust placed with captive advisors, the captive professional shall not willfully misrepresent or conceal material facts, or refuse to furnish material information requested by a client and in the possession of the captive professional.

The captive professional shall not allow the pursuit of personal financial gain or professional acclaim to negatively interfere with exercising their professional judgment in the best interest of a client. The client's best financial interests and well-being should be the captive professional's first priority.

The captive professional shall seek to be informed of and to operate in accordance with the policies, rules, laws and regulations relating to the professional activities which they undertake within the jurisdiction they operate. The captive professional shall not commit any felony. The captive professional shall not seek to aid, abet, or assist a client in the commission of a felony.

## **Canon 3**

Captive professionals shall be reasonably diligent in their interactions with clients and prospective clients and be reasonably diligent and prompt in their occupation and duties on behalf of clients

### **Comment**

The captive professional shall always seek to provide competent service to a client, and one component of competency is promptness. Competency also requires knowledge, thoroughness, and reasonable preparation.

The captive professional should control their workload and seek appropriate assistance so that a client is not neglected to its detriment (such as failing to timely file required regulatory documents or otherwise respond to regulatory inquiries).

The captive professional should make reasonable preparations for the continuation of their client's captive business interests in the possible event of their own unexpected death or disability.

#### **Canon 4**

The captive professional should seek to raise ethical standards within the profession and to raise their own standard of professionalism.

#### **Comment**

Captive professionals should encourage the development and improvement of laws and regulations that foster confidence in the captive insurance industry.

#### **Canon 5**

Captive insurance professionals shall seek to maintain dignified and honorable relationships with other insurance professionals and members of other professions.

#### **Comment**

Because of the position of the captive industry at the intersection of various industries, a captive professional must know the legal and ethical limitations of their profession and act within them. A captive professional who is not a certified public accountant or a member of a bar must not engage, or appear to engage, in the certifying of audit records or the unauthorized practice of law. A captive professional should seek to accurately represent his or her ability to provide captive insurance services to a client. If a client seeks a service outside the competence of a captive professional, the captive professional must acquire the requisite knowledge or seek guidance from other knowledgeable professionals, so that the client may be afforded the proper level of service. A captive professional should represent his or her professional training, experience, and competency accurately to clients and prospective clients.

#### **Canon 6**

Captive professionals should endeavor to elevate the public image of captive insurance and to improve the public understanding of captive insurance.

#### **Comment**

The captive professional shall seek to raise the public image and perception of the captive insurance industry as a reputable and respectable industry. The captive professional should support and encourage efforts to educate the public about the commercial, social, and economic benefit of captive insurance. This includes providing information about risk management techniques, captive insurance regulation, and particular uses of captive insurance to the general public. This also includes keeping aware of legislative changes, trends in existing and developing insurance coverages and markets, and other developments that may affect either specific captive insurance clients or the general public.

### **Canon 7**

The captive professional shall retain the autonomy to make independent decisions, exercise judgment, and give advice in the best interest of his or her client.

#### **Comment**

Captive professionals are often both technicians and business counselors. The captive professional is not engaged by a client merely for his or her ability to provide a technical skill. Instead, captive professionals also provide independent judgment, opinions, counseling, and advising about the industry in general as well as providing advice and assistance with specific situations. The captive professional shall retain the ability to inform the client that just because a transaction can be done, it is not necessarily in the best interest of the client to carry out the transaction.

### **Canon 8**

The captive professional should aspire to be open, frank, and veracious in communications with the client.

#### **Comment**

It is always easier to be the bearer of good news, rather than bad news. Veracity – the quality of being truthful or honest – is a hallmark of nearly all professional relationships. Because a captive professional will possess both opinions and insights, as well as technical skills, it is important that the professional be forthright with the client. The captive professional should provide and highlight both the good and bad of a situation, and not hide or ignore the possible negative outcomes. Occasionally, a client may wish to ignore negative information, to keep its “head in the sand” and be willfully ignorant, or to avoid bad news in general. In those situations, the captive professional should confront the bad news with the client and assist the client in an appropriate, lawful, and ethical manner, instead of allowing the client to further avoid the problem.

## **Canon 9**

To the best of his or her knowledge, a captive professional should fully and frankly disclose any conflicts of interest, or situations which could be perceived as a conflict of interest, with each client. After this disclosure, the professional should seek the informed consent of each client before continuing a business transaction or relationship.

### **Comment**

Conflicts of interest, whether real or perceived, will likely confront every captive professional in one manner or another. Conflicts can begin at the inception of a business relationship and can continue throughout. For example, a captive professional should not take a large non-refundable retainer or payment from a potential client who has no realistic chance to obtain regulatory approval for the formation of a captive insurance company. Captive managers should explain the operation of any risk pools which they – or companies wholly-owned or related to them– utilize with clients. Captive professionals should disclose when a service provider is a related business owned by themselves or a family member. This list is not exhaustive.

Conflicts of interest do not have to be strictly avoided; however, they have to be professionally managed through full, frank, and fair disclosure with the client. The client is then free to weigh the costs and benefits and make an informed decision. Disclosure of the conflict of interest, its nature, and possible adverse consequences should be explained to each client. This may require the explanation of fee structures, the manner and order in which risk is distributed, and the pecuniary costs and benefits to each person or business entity in a transaction. The client is then in an informed position to either (1) waive the conflict of interest or (2) take other steps to ameliorate the conflict. A best practice would be to obtain the client's waiver or consent to the conflict of interest in writing.

## **Canon 10**

If a captive professional's ethical obligations conflict with a statute, administrative regulation, or other professional code of ethics or conduct, the captive professional should inform the appropriate parties of the conflict between this aspirational code of ethics and the other authority. The captive professional should then initiate a conversation and seek to take steps to resolve the conflict. If the conflict cannot be amicably resolved, the captive professional and this code of ethics should yield to the other professional licensing or accreditation board or governmental authority.

### **Comment**

This final canon is established to prevent a captive professional from being placed into an unresolvable bind between competing obligations or overlapping professional codes.