

2025 National Income Tax Workbook

Chapter 1: New Legislation & Ethics



1

New Legislation – Changes to Circular 23

P 572

- Tax Return Preparation – impose standards on tax return preparation that are unrelated to representation before Treasury & the IRS
- Contingent Fees – Eliminates §10.27
 - Fee arrangements on an original, amended or claim for refund/credit
 - Disreputable Conduct
 - Subject to Sanctions

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New Legislation – Changes to Circular 23

P 573

- Limited Practice (AFSP) – Proposed §10.7(c)(1)(viii)
 - Represent before the IRS
 - Individual Income Tax Returns
 - Tax returns or claim for refund/credit
 - Practitioner signed return in year
Record of Completion was issued

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New Legislation – Changes to Circular 23

P 573 - 574

- Knowledge of Error or Omission – §10.21
- Advise client of noncompliance, error or omission & consequence of not correcting
- Advise client who made the error
- Proposed – Practitioner is REQUIRED to provide client with remediation plan
- Proposed – during representation
 - Consent from client to disclose error
 - Provide actions take to not repeat
 - Practitioner disengage client non-compliance (§10.22 due diligence)

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New Legislation – Changes to Circular 23

P 574

- Negotiation of Payments to Clients
- §10.31 – may not endorse check issues to client
- Proposed – expands endorsement & negotiate
 - All electronic payments to clients
 - With respect to Federal Tax Liability

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New Legislation – Changes to Circular 23

P 574

- §10.33 -- Best Practices
- Replace “tax advisors” with “tax practitioners”
- Proposed – create a data security policy
 - Safeguard with client information
 - Establish plan & procedures for data breaches

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New Legislation – Changes to Circular 23

P 574

- §10.33 -- Best Practices
- Proposed – identify, evaluate & address practitioners' mental impairment
 - Due to diminished capacity, substance abuse, physical/mental health, or other circumstances
- Proposed – establish business continuity & succession plan
 - Safeguards for “outside” events – natural disaster, cyberattack

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New Legislation – Changes to Circular 23

P 574

- Duty to Maintain Technological Competence
- §10.35 – practitioner competency, knowledge, skill, thoroughness
- Proposed – competency expanded to include technology used, storage & transmission of confidential information

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New Legislation – Changes to Circular 23

P 574

- Regulation of Written Tax Advice
- 10.37 – reasonable standards
 - Facts & circumstances test
- Proposed – expanded to practitioner’s knowledge of client's circumstances

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New Legislation – Changes to Circular 23

P 574 - 575

- Incompetence or Disreputable Conduct
- §10.51 – sanctions against practitioner
 - Separate from failure to meet the duties & abide by the restrictions related to practice
- Proposed – practitioner’s overall fitness to practice
 - Not limited to representation

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New Legislation – Changes to Circular 23

P 574 - 575

- Incompetence or Disreputable Conduct
- §10.50 – contemptuous conduct
 - Practice before the IRS
 - Proceeding pursuant to redesignated proposed §10.80 or any investigation by TIGTA
- Proposed – willful failure to follow any federal tax law is disreputable conduct
 - Knowingly violating federal tax law = disregard for law

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New Legislation – Changes to Circular 23

P 575

- Sanctions assessed against practitioner
- I.R.C. §6694(b) – aiding & abetting
- I.R.C. §6701 – careless, reckless or intentional disregard for rules or regulations

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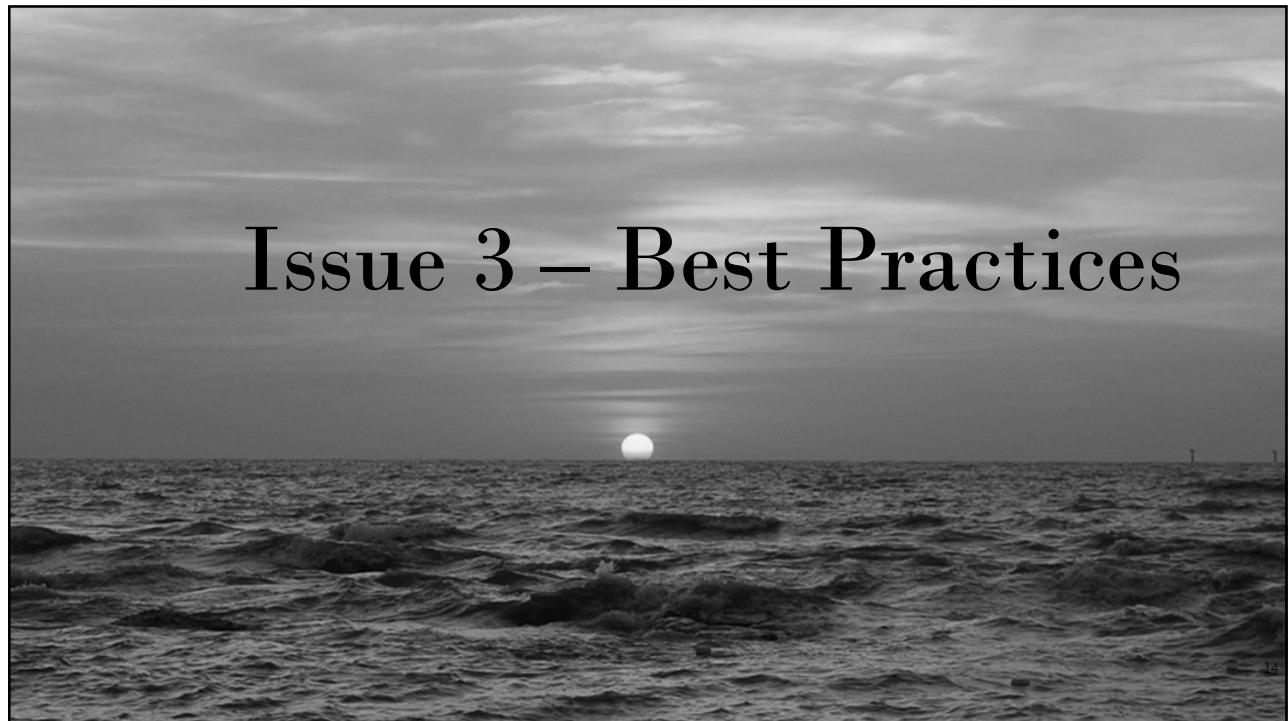
Chapter Issues

P 1

- Noncompliance with Laws & Regulations
- Representation before the IRS
- Best Practices
- Contingent Fees & Disreputable Conduct
- Unauthorized Practice of Law

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Issue 3 – Best Practices



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Data Safeguards

P 13

- Create Data Security Policy
- WISP – IRS Issues Chapter
- Gramm-Leach-Bliley Act
- American Bar Association –
Opinion 483 Standing
Committee on Ethics &
Professional Responsibility

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Duty of Competence

P 14

- Circular 230 §10.35
- Knowledge
- Skill
- Thoroughness
- Continuing Education

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Duty of Competence

P 14

- Circular 230 §10.33
- Understanding Technology Used
- Maintain Technology
- Safeguard property & information entrusted to the practitioner

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Duty of Competence

P 14

- Technology Competencies
- Monitor for Data Breach
 - Internet connections
 - External data sources
 - External vendors providing services

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Duty of Competence

P 14

- Stop the Breach & Restore Systems
 - Suspected or detected breach
 - Act reasonably
 - Act promptly
 - Stop the breach
 - Mitigate the damages

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Duty of Competence

P 14

- Determine What Occurred
 - Make reasonable efforts to determine what happened
 - How it happened
 - Make sure intrusion was stopped
 - What efforts to avoid another breach
 - Evaluate the data lost
 - Inform affected individuals

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Duty of Confidentiality

P 14

- Gramm-Leach-Bliley Act
- Keep client information confidential
- Reasonable efforts to prevent inadvertent or unauthorized disclosure or unauthorized access
- WISP – requirements
- §10.33 – clearly communicate with client

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Duty of Confidentiality

P 15

- Disclosure of incident to affected clients
- Steps for Practitioners
 - Contact E&O or Professional Liability Insurance
 - Contact IRS Stakeholder Liaison
 - Contact State

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Addressing Mental Impairments

P 15

- §10.33(a)(5) – practitioners address their own mental fitness
- Age related
- Substance abuse
- Physical or mental impairments
- Other circumstances

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Addressing Mental Impairments

P 15

- Encourage practitioner to get help
- Managers or Supervisors
 - Speak with the impaired
 - Require impaired practitioner to seek help
 - Refer to industry assistance programs

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Business Continuity Plan

P 16

- §10.33(a)(6) – establish succession plan
- Business Continuity – natural disasters or cyberattack
- Include procedures & safeguards for transfer of client information
- Communications with clients
- Continued Representation
- Record keeping

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Business Continuity Plan

P 16

- Backing up Files
- Paper Files
- Electronic records
- Local drives
- Cloud drives
- Trusted Vendors

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Sample Business Continuity Plan

P 17 - 19



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Issue 4 – Contingent Fees & Disreputable Conduct



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What are Contingent Fees?

P 20

- Fees based on outcome
- Fees based on % of refund
- Fees based on % of savings due to changed in return
- Fee arrangement where practitioner reimburses client if position is challenged

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What are Contingent Fees?

P 20

- Fees based on
 - Indemnity agreement
 - Guarantee
 - Rescission rights
- Ridgely v. Lew, 55 F. Supp.3d 89 (D.D.C. 2014)
 - IRS lacks authority to prohibit Contingent Fees
 - §10.51 -- Disreputable Conduct

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Practitioner Note

P 21

- IRS Power to Censure or Suspend
 - §31 U.S.C. 330(c) – authority to suspend or disbar
 - §10.51 – not dependent upon tax preparation
 - Separate from failure to meet the duties & abide by restrictions relating to practice before the IRS

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Practitioner Note

P 21

- Other Prohibitions on Contingent Fees
 - AICPA Code of Professional Conduct
 - “contingent fee arrangements would allow a CPA to benefit improperly from an interest in, or relationship with, a client”
 - State accountancy boards prohibit contingent fee arrangements

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Disreputable Conduct

P 22

- Contemptuous Conduct – abusive acts, language, false accusations/statements,
- Noncompliance with Federal Tax Law
- Assessment of Penalties
 - Willful or reckless understatement of tax liability
 - Aiding or abetting
 - Careless, reckless, intentional disregard of rules & regs.
 - Promotion of abusive tax shelters

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Disreputable Conduct

P 22

- I.R.C. §6694(b) – willful or reckless understatement of tax liability
 - Greater of \$ 5,000 or 75% of income derived
- Example 1.1 – Unallowed Expenses Claimed
- Example 1.2 – Expenses Overstated

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Disreputable Conduct

P 23

- I.R.C. §6701 -- Aiding & Abetting
 - \$ 1,000 per document
 - \$ 10,000 Corporations
 - Accuracy-related penalty
- I.R.C. §6662(b)(1) – Careless, Reckless or Intentional Disregard for Rules & Regs.
 - Accuracy-related penalty
 - 20% of the underpayment amount

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Cross Reference

P 23

- 2023 Workbook pgs 94-96
- Reasonable Cause Relief
- Taxpayer acted in good faith
- Facts & Circumstances
- Case-by-case basis

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Issue 5 – Unauthorized Practice of Law

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FinCen Guidance

P 25

- Related to Corporate Transparency Act
- BOI reporting
- Third-parties who are not attorneys
- CTA or FinCen do not prohibit non-attorneys from filing reports if authorized
- State Law – dictates unauthorized practice of law
 - Maryland
 - New Jersey
 - Iowa

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CASE STUDY 1: UNAUTHORIZED PRACTICE OF LAW P. 28

- Ashley and Chad Williams are married; reside in Oregon.
- Ashley owns a local vineyard; established by her grandfather
- Chad manages the vineyard and Ashley is the winemaker.
- In 2025, the vineyard obtained an operating line of credit for operation costs.
- Ashley and Chad met with their CPA, Avi Singh – tax planning/asset protection
- Avi recommended they form an LLC; he prepared the articles of organization; made couple equal members; obtained an EIN and filed articles with the state.
- Avi then advised them to speak to their attorney about deeding the property to the LLC

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CASE STUDY 1: UNAUTHORIZED PRACTICE OF LAW

1. Did Avi engage in the unauthorized practice of law when he recommended an LLC and prepared the articles of organization?
2. What advice should Avi have given Ashley and Chad?

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CASE STUDY 1: RESPONSE P. 32

1. Did Avi engage in the unauthorized practice of law when he recommended an LLC and prepared the articles of organization?

- Advising Ashley and Chad about the tax benefits of an LLC is within the scope of authorized tax advice.
- However, if the analysis requires a legal interpretation, then it may constitute the unauthorized practice of law.

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CASE STUDY 1: RESPONSE P. 32

2. What advice should Avi have given Ashley and Chad?

- Advising Ashley and Chad about what is necessary to ensure liability protection is likely legal advice.
- Avi should advise Ashley and Chad to consult with their attorney and insurance agent to discuss how best to protect the LLC status of the business.
- Avi should also recommend that they consult with their attorney about how the transfer of the separately owned vineyard property to the jointly owned LLC could affect the character of the property.

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CASE STUDY 4: PRACTICE CONTINUATION P. 29

- Cold Creek Tax and Accounting is a small accounting firm in Boulder, Colorado.
- Cyberattack on April 8, 2025, shut down the energy and communications grid.
- Electricity and landlines were out of service; the internet was down and the US Postal Service was impaired.
- Power was still not restored by April 10th and electronic devices started losing battery power.

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CASE STUDY 4: PRACTICE CONTINUATION

P. 29

1. What should Cold Creek do in this situation?
2. How could Cold Creek have been better prepared for this attack?

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CASE STUDY 4: RESPONSE

P. 35

1. What should Cold Creek do in this situation?
 - Under Circular 230 § 10.23, a tax practitioner has a duty to not unreasonably delay the prompt disposition of any matter before the IRS.
 - If Cold Creek cannot gain access to paper or electronic files following the disaster, it must identify all existing deadlines, determine which are imminent or can be extended.
 - Additionally, Cold Creek must notify clients of current and changed deadlines because of the disaster and if they are unable to assist timely, help the client find an alternative tax practitioner.

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CASE STUDY 4: RESPONSE P. 35

2. How could Cold Creek have been better prepared for this attack?

- Proposed Circular 230 § 10.33(a)(6) would provide that it is a best practice for tax practitioners to establish a business continuity and succession plan that includes procedures and safeguards in the event of a disaster or even the cessation of a practitioner's practice.
- Cold Creek should adopt a business continuity plan and regularly test and update the plan.

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CASE STUDY 7: RECORDS RETURN P. 30

- Jake and Maggie Retained Yara Abadi to prepare their 2025 tax return.
- Jake dropped of the receipts and tax documents; Yara scanned the documents and posted them to the client's portal.
- Yari entered all of Jakes income and expenses into QuickBooks and used her software to create a depreciation schedule and generate an income tax return.

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CASE STUDY 7: RECORDS RETURN P. 30

- The clients directed Yari not to file the return
- They thought she made an error and did not want to pay the tax liability
- Two weeks later, via email directed Yari to return:
 - All electronic data files in her possession
 - All depreciation or carryover schedules
 - QuickBooks data file
 - All physical documents in her possession – ship to their new CPA in Connecticut

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CASE STUDY 7: RECORDS RETURN PP. 30-31

1. Does Yara have to produce the records in a, b, and c?
2. Does Yara have to produce the physical records in d, and if so, can she also charge for copying and shipping?

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CASE STUDY 7: RESPONSE**P. 38**

1. Does Yara have to produce the records in a, b, and c?

- Yara was engaged to prepare a tax return, not to perform bookkeeping services for the client and unless the engagement letter states otherwise, QuickBooks data file is considered Yara's working papers. Yara is not required to provide the datafile to the client.
- Yara used her own software to create electronic data files; she should return the documents provided by the client which she used to create the data file, but Yara is not required to provide the electronic data file under AICPA rules.
- Under AICPA Q&A Section 650, account grouping schedules, depreciation schedules and carryover schedules prepared by Yara should be provided to the client unless fees remain unpaid.

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CASE STUDY 7: RESPONSE**P. 39**

2. Does Yara have to produce the physical records in d, and if so, can she charge for copying and shipping?

- If Jake and Maggie can access those records from the client portal Yara used, the Yara has met her obligation to return those records.
- If the clients cannot access the portal or cannot download the files or they want the original documents returned, Yara has not met the obligation to return the records.
- Yara can ask them if there's an electronic format, they can use to access the records; she can ask them to pay the shipping fee; however, if they decline Yara is ultimately responsible for complying with the request within 45 days using reasonable means.

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CASE STUDY 8: CONTINGENT FEES P. 31

- Shane Nash is a seasonal tax preparer in Bonita Springs, Florida. He “volunteers” at a local community center each February.
- Community center guests are mainly retired and have only social security and investment income; he prepares tax returns for these guests which generally takes him 35 minutes to complete.
- Shane charges a flat \$950 fee to prepare a tax return. He also offers a refundable fee option which requires his clients to pay extra to receive a refund of any amount denied by the IRS.

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CASE STUDY 8: CONTINGENT FEES P. 31

1. Is Shane’s \$950 flat fee allowed?
2. Does Shane’s refundable fee violate any ethical rules?
3. How could Shane improve his billing practices?

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CASE STUDY 8: RESPONSE**P. 39**

1. Is Shane's \$950 flat fee allowed?

- Under current Circular 230 § 10.27, a practitioner may not charge an unconscionable fee in connection with any matter before the IRS.
- The proposed Circular 230 § 10.51 would define charging an unconscionable fee as disreputable conduct.
- The American Bar Association Model Rule 1.5 lists factors to determine if attorney fees are unreasonable. See page 39 for the list.
- Considering these factors, Shane's fees may be unconscionable and violate Circular 230 § 10.27.

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CASE STUDY 8: RESPONSE**P. 39**

2. Does Shane's refundable fee violate any ethical rules?

- Shane's refundable fee likely creates a contingent fee arrangement because the amount of the fee is based on whether the IRS accepts the claimed refund amount.

3. How could Shane improve his billing practices?

- Shane should determine the amount of his fee based on the effort expended and not the result achieved.
- Shane should present each client with an engagement letter that includes a simple formula for calculating fees based on objective criteria, such as time spent or the number of forms filed.

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CASE STUDY 10: CONFLICT OF INTEREST P. 32

- Rennie Jones, CPA prepares the annual income tax return for Pyramid Building, LLC which is owned by Dave Griswold and Marissa Gomez.
- Rennie also provides income tax preparation for Marissa and her husband, Juan. Marissa and Juan file jointly.
- In 2025, Pyramid purchased equipment for a new government construction project.
- Dave's only source of income is through Pyramid for 2025; Marissa's husband is an oral surgeon with over \$500,000 income in 2025
- Claiming bonus/179 depreciation for the equipment purchased, would benefit Juan and Marissa, but not Dave.
- Marissa has also asked Rennie for advice on how to structure a buyout of Dave's interest in Pyramid.

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CASE STUDY 10: CONFLICT OF INTEREST P. 32

1. Can Rennie represent both Pyramid Building and Marissa and Juan in these matters?
2. If Rennie decides that she can represent all the parties, what should Rennie do before she commences that representation?

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CASE STUDY 10: RESPONSE**P. 42**

1. Can Remmie represent both Pyramid Building and Marissa and Juan in these matters?

- Remmie may have a conflict of interest if there is a significant risk that representation of one client will either be directly adverse to the other client or will be materially limited by Remmie's responsibilities to the other client.

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CASE STUDY 10: RESPONSE**P. 42**

2. If Remmie decides that she can represent all the parties, what should Remmie do before she commences that representation?

- If there is a conflict of interest, Remmie may represent both the LLC and its members if Remmie reasonably believes that:
 - She will be able to provide competent and diligent representation to each
 - The law does not prohibit the representation and
 - Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict is known by the practitioner

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