



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Board of Accountancy

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: 4/24/98

(2) Purpose:

To clarify the prohibition against certified public accountants (CPAs), engaged in the practice of public accounting, paying or receiving commissions, referral fees, and/or contingent fees except to allow CPAs, engaged in the practice of public accounting, to accept contingent fees in very restricted situations; To require CPAs, not in the practice of public accounting but using the CPA title, to make full disclosure when compensated by commission, referral fee, or contingent fee

(3) Citation of existing rules affected by this order: New section: WAC 4-25-626

Repealed: WAC 4-25-625 and WAC 4-25-627

Amended:

Suspended:

(4) Statutory authority for adoption: RCW 18.04.055(2)

Other authority:

PERMANENT RULE ONLY (including EXPEDITED ADOPTION):

Adopted under notice filed as WSR 98-01-231 on 12/24/97 (date).

Describe any changes other than editing from proposed to adopted version: See attached.

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date).

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

or Expedited Rule Making

- 31 days after filing
- Other (specify) _____ *

*(If less than 31 days after filing specific finding in 5.3 under RCW 34-05.380(3) is required)

Emergency Rules

- Immediately
- Later (specify) _____

NAME (TYPE OR PRINT)

Cheryl M. Sexton

SIGNATURE

Cheryl M. Sexton

TITLE

Confidential Secretary

DATE

May 28, 1998

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAY 29 1998

TIME 4:03 AM
WSR 98-12-055 PM

CR-103 attachment

Board of Accountancy

WAC 4-25-626 Can I accept commission, referral, or contingent fees?

May 28, 1998

PERMANENT RULE ONLY—Describe any changes other than editing from proposed to adopted version:

1. Presented the rule in a clear writing style for easier understanding (included a change in the title of the rule—from Compensation to Can I accept commission, referral, or contingent fees?
2. Added language from the Uniform Accountancy Act (UAA) regarding referral fees:
“Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment in advance to the client.”
3. Added language to allow a licensee in public practice to accept a contingent fee for tax services which will receive substantive consideration by tax authorities provided to a client during that client’s attest engagement or during the period covered by the respective attest report
4. Added language to prohibit a licensee in public practice from accepting a contingent fee for preparation of amended tax returns in addition to original tax returns
5. Added language to require a licensee to disclose all contingent fee arrangements in advance of client acceptance

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New 1 Amended _____ Repealed _____

The number of sections adopted on the agency's own initiative:

New _____ Amended _____ Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New 1 Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>1</u>	Amended	_____	Repealed	_____

NEW SECTION

WAC 4-25-626 Can I accept commission, referral, or contingent fees? (1) Commissions and referral fees are compensation arrangements where:

(a) The primary contractual relationship for the product or service is not between the client and CPA;

(b) The CPA is not primarily responsible to the client for the performance or reliability of the product or service;

(c) The CPA adds no significant value to the product or service; or

(d) A third party instead of the client pays the CPA for the products or services.

(2) A **CPA who is not in public practice but using the title CPA** may accept commission, referral, and contingent fees. However, the CPA must disclose in writing to the client the nature, source and amount of the commission, referral or contingent fee.

(3) The following parameters define the limited circumstances in which a **licensee in public practice** may be compensated on a commission or referral fee basis. This rule does not apply to compensation set by courts, judicial proceedings, public authorities or governmental agencies.

(a) A **licensee in public practice** may **not** enter into compensation arrangements for attest services that in any way tend to bias or give the appearance of tending to bias the results of attest services or the licensee's report.

(b) A **licensee in public practice** may **not** accept a commission or referral fee, as defined in subsection (1) of this section, for the sale or referral to a client of products or services of others.

(c) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment in advance to the client.

(4) A **licensee in public practice** may **not** accept a contingent fee for:

(a) Attest services;

(b) Other services, except for tax services which will receive substantive consideration by tax authorities, provided to a client during that client's attest engagement or during the period covered by the respective attest report;

(c) An arrangement meeting any of the definitions of commissions and referral fees in subsection (1) of this section;

(d) An arrangement that violates federal laws or the laws or regulations of Washington state or its municipalities; or

(e) Preparation of original or amended tax returns (a licensee may accept a contingent fee in situations where the licensee reasonably expects the finding or results, on which the contingent

fee is based, will receive substantive consideration by tax authorities);

(f) For services other than those in (a) through (e) of this subsection, a **licensee in public practice may** perform professional services for a fee which is contingent on the findings or results of the professional services with the following restrictions:

(i) If the situation involves adverse party(ies) and the licensee expects the findings or results will receive substantive consideration by the adverse party(ies) or their agent(s), the licensee **must**:

(A) Obtain a written agreement from the client stating the client will provide to the licensee the name(s) and address(es) of the adverse party(ies) or the primary agent(s) of the adverse party(ies); and

(B) Provide prompt written notification to the adverse party(ies) or their agent(s) of the licensee's role as the client's advisor and recommend the adverse party(ies) or their agent(s) seek their own advisor.

(ii) All contingent fee arrangements must:

(A) Be disclosed in advance of client acceptance;

(B) Be in writing;

(C) Include the method of calculating the fee;

(D) Specify the licensee's role as the client's advisor; and

(E) Be available to the board or other regulatory agencies upon request.