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Society of Settlement Planners Adopts Standards of Professional Conduct

March 31, 2008 — Greg Maxwell, president of the Society of Settlement Planners (SSP), has announced the adoption by that organization of the Standards of Professional Conduct for Settlement Planners to serve as practice guidelines for those engaged in resolving injury claims on behalf of their clients. The adoption occurred at the SSP's annual meeting in Washington, D.C., this month.

A settlement planner is a representative of a person participating in the design, negotiation and implementation of a settlement or satisfaction of a judgment for the benefit of a person claiming a legal entitlement to an award of damages or other compensation. A settlement planner may represent a plaintiff, a defendant, an insurer, a guardian *ad litem*, an heir of a claimant, an attorney or another person participating in the settlement process.

As stated in the document's preamble, "the Standards of Professional Conduct for Settlement Planners are rules of reason and are intended to impose high standards of conduct on professional settlement planners who are providing settlement planning services to a claimant or obligor, or to an attorney acting on the claimant or obligor's behalf. They are, however, also intended to provide guidance to other professionals as they seek to ascertain their responsibilities when, in connection with the practice of their profession, they participate in the settlement planning process."

The Standards of Professional Conduct for Settlement Planners are subscribed to by members of the SSP as a condition of joining and maintaining good standing in that organization. “Non-members who provide settlement planning services are not required to subscribe to the SSP’s mission statement or to these standards, but they are encouraged to do so,” Maxwell explains.

The preamble continues: “Compliance with these Rules depends upon voluntary adherence and, secondarily, upon reinforcement by peer and public opinion. A settlement planner is also guided by personal conscience. Membership in this organization, including display of its logo on a member’s letterhead and business cards, is intended to convey to others that the member is committed to the high standards of conduct specified in these Rules.”

The society’s purpose in adopting these standards, according to attorney Richard (Dick) Risk, who coordinated their development, was to: create a meaningful and practical set of standards for all settlement planners, grounded in the law and other rules promulgated by regulators; provide an enforceable code of conduct for those who voluntarily hold themselves to a higher standard of ethical behavior than the law may require, by being members of the society; bring to light some of the current practices that may be illegal, harmful to settling claimants or otherwise determined inappropriate by regulators; establish standards of care as a guide to courts and for their possible adoption as a rule of law; and serve as a model for legislators seeking to enact laws pertinent to settlement planning.

“The Standards of Professional Conduct for Settlement Planners are intended to prescribe norms of conduct and provide guidance for all who engage in the settlement process, regardless of membership in the SSP,” Risk explains. “These rules provide a basis for a member settlement planner’s self-assessment and the assessment of the professionalism of other settlement planners,” the preamble says. “Although it is not intended that a violation of these rules will, in itself, subject a settlement planner to civil liability to a person injured by such a violation, it is expected that these rules may be used as evidence of the conduct expected of reasonable settlement planners,” according to the preamble.

Risk summarizes, “these rules are largely about making disclosures about financial aspects of the settlement, including compensation of advisors and agents, and obtaining informed consent of the settling parties, especially the injured party. They are also about avoiding conflicts of interest.”

“Another major reason for a profession to adopt ethics rules is to solidify the recognition of the profession itself,” Risk points out. “To be acknowledged generally as a profession, its practitioners must possess a unique skill set, and there must be an individual licensure or accreditation requirement, a body of literature, a specific university level educational curriculum, and a meaningful canon of ethics.”

Last year, the SSP established the Registry of Settlement Planners to create a professional designation to provide peer group accreditation of the individual practitioner, with a goal to be recognized by the National Commission for Certifying Agencies. Texas Tech University is the educational provider for those who will receive the Registered Settlement Planner (RSP) designation. “The adoption of the Standards of Professional Conduct for Settlement Planners fulfills a second important goal of the society to gain public recognition and acceptance of settlement planning as a profession,” adds Maxwell.

Several members of the SSP have contributed to the body of literature, having published books and periodicals on structured settlements and written articles for peer-reviewed law journals.

Settlement planning was born out of necessity, according to Risk. “There was a time when the resolution of personal injury claims was simple. The claimant either opted for cash or a series of defined future payments, called a structured settlement, or a combination of both. Today, with tax laws becoming ever more complex and taxpayer funded programs like Medicare and Medicaid paying increasing attention to the large settlement dollar amounts sometimes being paid to their beneficiaries, a claimant who settles without professional advice could unnecessarily be subjected to adverse tax consequences or jeopardize a right to future medical payments,” Risk explains.

“Attorneys on both sides of the negotiations, while they may be expert in prosecuting or defending claims on behalf of their respective clients, are increasingly aware that they cannot, in many instances, also competently represent their clients in the intricacies of settlement planning,” says Risk.

“Some attorneys who successfully negotiated large settlement amounts have been sued by their own clients for failure to provide competent representation in planning other aspects of the settlement.”

Settlement planning is a process that integrates immediate and periodic payments by planning for the timely use of funds by using annuities, trusts, taxable investments and other vehicles. It strives to preserve assets through coordination with other benefits and by prudent estate planning.

Settlement planners may provide advice and other services to their clients concerning claim valuation, negotiation strategy, the determination of rated ages based on impaired life expectancy, life care planning for catastrophically injured claimants, allocation of proceeds among claimants with competing interests, taxable and non-taxable periodic payments, structured settlements, attorney fee structures, Medicaid preservation through qualifying trusts, Medicare set-aside arrangements as may be required by law, investments, irrevocable trusts, assessment of a plan's financial risk, and estate liquidity for tax planning.

Risk, whose nationwide law practice is based in Tulsa, Okla., is a founding professional member and a director of the society, which was formed in 2001. The SSP is a non-profit organization, “a primary purpose of which is to benefit the public by helping to ensure that settlement planning advice and services are delivered by competent ethical settlement planners,” according to Maxwell. “The SSP promotes the value of settlement planning and advances the settlement planning profession through public policy advocacy, education and the promotion of high standards of conduct by settlement planners,” says Maxwell.

When assigned this project nearly three years ago, Risk recruited a diversified panel of distinguished advisors to provide guidance in identifying the tasks and shaping the development of the document. Principal among these was Carl A. Pierce, J.D., W. Allen Separk Distinguished Professor of Law, University of Tennessee College of Law, Knoxville, Tenn., who was a reporter for American Bar Association's Model Rules of Professional Conduct 2000 revision. Risk and Pierce shared the drafting duties and are considered the principal authors of the SSP ethics standards.

“Professor Pierce was an invaluable resource to us,” says Risk, “having spent seven years on the model ethics standards for all lawyers in the United States. He was quick to identify our issues, especially as they relate to working with attorneys, and could immediately propose a solution.”

Other advisors for the early conceptual stage were: Fredrick E. (Rick) Adkins III, CFP[®], MBA, ChFC, CLU, president and CEO, the Arkansas Financial Group, Inc., former chairman of the Board of Governors, Certified Financial Planner Board of Standards, Little Rock, Ark.; Sherman L. Cohn, JD, LL.M., professor of law, Georgetown University Law Center, noted author on ethics and past national president, for 11 consecutive years, of the American Inns of Court, Washington, D.C.; Burke Christensen, JD, former general counsel, Society of Financial Service Professionals, professor, Robert B. Morgan Chair of Insurance, Eastern Kentucky University, Richmond, Ky.; A. Frank Johns, JD, partner, Booth, Harrington & Johns, LLP, former president, National Academy of Elder Law Attorneys, participant in the ABA Model Rules of Professional Conduct 2000 revision, Greensboro, N.C.; Hon. John M. Morrison, JD, Montana state auditor and commissioner of insurance and securities, former chairman, Consumer Liaison Committee, National Association of Insurance Commissioners, Helena, Mont.; and James C. Murphy, PhD., executive director, International Business Ethics Institute, Washington, D.C. “The listing of affiliations does not imply endorsement by these organizations,” Risk notes, “but we are extremely fortunate to have received the benefit of individuals closely associated with their ethics rules.”

This advisory group contributed from their own vast and diverse individual experiences. They also reviewed ethics codes from numerous other professional organizations and commented on earlier drafts of the standards for settlement planners.

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NOTE: Additional information on the Society of Settlement Planners, including the text of the Standards of Professional Conduct for Settlement Planners, is available on its website at: <http://www.settlementplanners.org>.