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**PROTECTING
YOUR
PRACTICE**

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PROTECTING YOUR PRACTICE

KATHERINE VESSENES's superb new book will show you how to build client relationships, grow your practice, and avoid lawsuits in today's increasingly competitive and litigious environment.

Protecting Your Practice provides forms and checklists, case studies, practical strategies, action items, and insights into the critical issues that affect financial services professionals. Katherine Vessenes spells out ways to enhance client relationships, comply with regulations, organize record keeping, and protect your business from malpractice claims.

Written in association with one of the world's largest and oldest organizations for financial services professionals, *Protecting Your Practice* is essential information for registered investment advisers, broker-dealers, registered representatives, accountants, tax advisers, insurance agents, wire houses, commission and fee planners, attorneys, trust officers, estate planners, and development officers in planned giving.

**Praise for
Protecting Your Practice
by Katherine Vessenes
in cooperation with the IAFP**

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Inside Information

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“This book is a practical guide to a subject of paramount importance to registered reps, broker-dealers and managers. **Katherine Vessenes has clearly communicated technical compliance information in a format that is easy to apply** to your practice. **We have ordered a copy for each of our registered reps.**”

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Former Executive Editor
Financial Planning

“A voice of authority and knowledge that comes from years of dealing with these issues.”

ROBERT CLARK
Editor in Chief
Investment Advisor

“Katherine Vessenes . . . is **ahead of the pack in providing clear and concise text, real-life situations, and action items** that can be incorporated into the successful planner’s practice. . . . **A must-read for serious financial professionals.**”

JEFFREY H. RATTINER, CPA, CFP
President and CEO
JR Financial Group, Inc.

“*Protecting Your Practice* is a continuation of Katherine Vessenes’s valuable contribution to the financial planning profession. We don’t like to think about it but **we must take appropriate steps to ensure the continuation of our practice** for our own protection and that of our existing clients. **This book tells us how to do it.**”

LINDA S. LUBITZ, CFP
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“Its no-nonsense approach . . . provides **practical solutions for avoiding the various legal and regulatory pitfalls** of the financial services industry.”

RICK YOUNG

Former Director of Compliance

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“**An excellent resource for compliance officers, financial planning practitioners, and investment advisers.** Katherine Vessenes’s suggestions show how compliance can *and should* become an integral part of your day-to-day activities—without causing ‘sales prevention.’”

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President and Founder

Strategic Compliance Concepts

**... and praise for her previous book,
The Compliance and Liability Handbook for
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Financial Service Professionals
by Katherine Vessenes
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“**We require all our representatives to read Katherine’s practical and insightful book.** Our group works with high-producing independent agents who need to know specifically what they must do to protect their business. **Her marketing ideas on how to grow your business are invaluable.** Combined with her legal viewpoint on how to avoid litigation, every detail is worthwhile.”

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**PROTECTING
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*This book is
dedicated to the
Creator of Truth
and Integrity*

— K. V. .

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INTRODUCTION

PROTECTING YOUR PRACTICE

NOTHING HIDES SIN like a bull market. When stock prices are soaring, the last thing on most clients' minds is regulation violations. In a prolonged bear market, however, even your favorite clients may be phoning you from their attorneys' office.

When I first started in the business, my mentor taught me to do certain things that

were actually felonies. He was not trying to make me a criminal. He was just handing on to me the same overzealous sales practices that had made him a lot of money. In the years since then, the field has become so competitive and complex that even experienced financial professionals will find new things in this book to improve their practice and keep them out of trouble.

The first step in building a successful practice is knowing what business you are in. Forty years ago, proprietors of drive-in

restaurants thought they were in the hamburger business. McDonald's Corp. founder Ray Kroc understood something his competition did not: he was really in the speed and clean-restroom business. That knowledge made him a billionaire.

You need to know what kind of business you are in. What is really motivating clients to seek your advice?

Believe it or not, we are in the peace-of-mind business. Whenever I lecture on choosing an adviser, an investment, or even

a broker-dealer, I counsel the audience to first look at the character of the people at the top. If people of good character are running the operation, they will work hard to save even the worst deal. On the other hand, leaders with poor character at the helm can destroy even the best deal.

Character is critical. Trusting a financial adviser to behave ethically when no one is looking is the single most important factor on a consumer's mind. Clients are begging for someone they can trust. We can build

that good faith and reliance by showing them that our integrity is beyond reproach.

I believe in doing what is right by the client. I believe this not just to appease regulators and avoid lawsuits but also because it builds business.

This book is about the “how” of doing the right thing.

K. V.

KNOWING THE

ALPHABET

THE FINANCIAL SERVICES industry has more than its fair share of acronyms. To make this book as user-friendly as possible, it was decided to include all widely used acronyms in this front material. These acronyms are presented below in alphabetical order. Whenever you see an acronym in the text and are not sure what it stands for

or means, just refer to this listing for a brief definition.

In general, acronyms specific to one subject matter and appearing in only one chapter are not included here. Thus, ADR or Alternative Dispute Resolution is not listed below as it is described solely in Chapter 18. However, both ADR and Alternative Dispute Resolution appear as entries in the Index.

AICPA (AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS) Based in New York City, AICPA has 328,000 members throughout the country. Although only 1,650 accountants have earned its PFS designation, the Personal Financial Planning Membership Section of AICPA has 7,000 members.¹

CFA (CHARTERED FINANCIAL ANALYST) This designation, awarded by the Association for Investment Management and Research, is described in Chapter 4.

CFP (CERTIFIED FINANCIAL PLANNER) The CFP and Certified Financial Planner designations are two separate federally registered service marks, which are for the use of individuals who have completed the requirements established by the CFP Board. Approximately 31,500 people are currently licensed to use the CFP mark.² This is discussed in Chapter 5.

CFP BOARD (CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.) This is a private, not-for-profit, professional regulatory organization which sets standards for CFP credentials, including education, examination, work experience, and ethics.³ These standards are discussed in Chapter 5.

ChFC (CHARTERED FINANCIAL CONSULTANT) This educational designation, described in Chapter 5, is granted by The American College, Bryn Mawr, Pennsylvania. The American College was founded to serve the life insurance industry by the American Society of CLU and ChFC, a national association for life insurance and financial services professionals also headquartered in Bryn Mawr. Approximately 15,300 mem-

bers of the society have been awarded the ChFC designation.⁴

CLU (CHARTERED LIFE UNDERWRITER) This educational designation, described in Chapter 5, is granted by The American College, Bryn Mawr, Pennsylvania. The American College was founded to serve the life insurance industry by the American Society of CLU and ChFC, a national association for life insurance and financial services professionals also headquartered in Bryn Mawr. Most of the 34,000 members of the society hold the CLU designation.⁵

CPA (CERTIFIED PUBLIC ACCOUNTANT) This designation, awarded to accountants after a prescribed course of study and experience, is described in Chapter 4.

E&O (ERRORS AND OMISSIONS COVERAGE) Chapter 17 is devoted to this form of liability insurance.

ERISA (EMPLOYER RETIREMENT INCOME SECURITY ACT OF 1974) Regulation of pension plans is included within the scope of this Act.

IAFP (INTERNATIONAL ASSOCIATION FOR FINANCIAL PLANNING) This is a professional membership association dedicated to advancing the financial planning process. Founded in 1969, IAFP is the oldest and largest nonprofit organization of its type in the world. The IAFP represents more than 16,500 individuals and institutions in all 50 states and abroad who are committed to furthering the financial planning process as the foundation for smart decision making. Its members, primarily financial advisers, are from all backgrounds and disciplines.

IARFC (INTERNATIONAL ASSOCIATION OF REGISTERED FINANCIAL CONSULTANTS) Headquartered in Chesterfield, Missouri, this professional association has more than 1,000 members. It provides practice management support services, hosts educa-

tional conferences, and awards the RFC designation to those who have earned it.⁶

ICFP (INSTITUTE OF CERTIFIED FINANCIAL PLANNERS) Headquartered in Denver, Colorado, this is a membership association for the Certified Financial Planner professionals who have qualified for the license prerequisites set by the CFP Board of Standards, Inc., the professional regulatory body also located in Denver. ICFP has 11,000 members.

IPS (INVESTMENT POLICY STATEMENT) This written document verifies a client's investment philosophy, financial goals, and the specific strategies for attaining these goals.

NAIC (NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS) Created by state insurance regulators in 1871 to address the need to coordinate regulation of multistate insurers, NAIC membership includes commissioners from all states, the District of Columbia, and the four U.S. territories. NAIC helps regulators fulfill their obligation of protecting the interests of insurance consumers and provides a forum for the development of uniform policy.

NALU (NATIONAL ASSOCIATION OF LIFE UNDERWRITERS) This is a federation of approximately 950 local life underwriters associations affiliated with 50 state associations; together, the local and state associations make up the national organization. There are 120,000 sales professionals in life and health insurance and other financial fields that belong to the local associations. To fulfill its mission, NALU develops programs in communications, education, ethical conduct, government relations and advocacy, member associations, public relations, and community service.

NAPFA (NATIONAL ASSOCIATION OF PERSONAL FINANCIAL ADVISORS) With more than 575 members and affiliates, NAPFA is the largest association for fee-only financial planners. It is headquartered in Buf-