



UNIVERSITY OF  
**CENTRAL**  
**ARKANSAS™**

COLLEGE OF  
BUSINESS  
ACCOUNTING

## 2024 Continuing Professional Education in Accounting

Friday, December 6, 2024

**1:15 PM – 2:05 PM Understanding Your License**

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1. What is the Practice of Accountancy (in Arkansas)?
  - a. “Practice of public accounting” means the performance of or an offer to perform attest services as defined in this section or the performance of or an offer to perform professional services for the general public. \*\*\* “Professional services” means services arising out of or related to the specialized knowledge or skills performed by certified public accountants or public accountants. Ark. Code Ann. § 17-12-103(14) and (17).
  - b. You need a license to practice.

“No person shall assume or use the title or designation ‘certified public accountant’ or the abbreviation ‘CPA’ or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that he or she is a certified public accountant, unless he or she holds a current license . . .”  
Ark. Code Ann. § 17-12-106

“License” means a certificate issued under § 17-12-301 [Education + Exam] or a registration under § 17-12-312 [any person qualified to register as a public accountant on July 1, 1975] or § 17-12-401 et seq. [registration as a firm] or, in each case, a certificate or permit issued or a registration under corresponding provisions of prior law. Ark. Code Ann. § 17-12-103(9).
2. What is Practice before the IRS?
  - a. [T]he Secretary of the Treasury may regulate the practice of representatives of persons before the Department of the Treasury. 31 U.S.C. § 330
  - b. Practice before the Internal Revenue Service comprehends all matters connected with *a presentation to the Internal Revenue Service* or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan

or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings. 31 C.F.R. § 10.2.

3. What's Membership in the AICPA (limited discussion point)

- a. "Membership in the American Institute of Certified Public Accountants is voluntary. By accepting membership, a certified public accountant assumes an obligation of self-discipline above and beyond the requirements of laws and regulations." AICPA ET Section 51.01
- b. Membership is minimally relevant.
  - i. The Public Accountancy Act of 1975 mentions the AICPA. Ark. Code Ann. § 17-12-103(a)(1) and (2); viz., "Attest" means providing the following services (summary):
    1. Audit under AICPA Statements on Auditing Standards
    2. Review of financial statement under AICPA Statements on Standards for Accounting and Review Services
    3. Examination of prospective financial statement, compilation, and other services under AICPA Statements on Standards for Attestation Engagements.
  - ii. Note: performing to AICPA standards does not require membership in the AICPA.
- c. "The Code of Professional Conduct of the American Institute of Certified Public Accountants consists of two sections—(1) the Principles and (2) the Rules." Preamble
- d. "The bylaws of the AICPA require that members adhere to the rules of the Code of Professional Conduct." ET sec 91.01
- e. Sec

4. Due Process

- a. Key features of procedural due process
  - i. notice and
  - ii. opportunity for a hearing
  - iii. (Some agencies—generally when the public health or safety are implicated—have the power to suspend a license first, and then give notice and have a hearing.)
- b. An Arkansas accounting license is property.
  - i. Constitutions (US and Arkansas) provide no deprivation of "life, liberty or *property*, without due process of law."
  - ii. Therefore, before the ASBPA can deny, suspend, restrict, condition or revoke a license, the Board must give notice and an opportunity for a hearing.
- c. The IRS provides that "[a]fter notice and opportunity for a proceeding, the [Treasury] Secretary may suspend or disbar from practice before the Department, or censure, a representative who is incompetent disreputable, violates regulations, or willfully and knowingly misleads or threatens. 31 U.S.C. § 330(c).
- d. Due Process protections do not extend to the AICPA but it has analogous procedural protections.

5. Legal framework for Administrative Law, generally.
  - a. Agencies (e.g., ASBPA, Treasury Department) are Legislative Branch creations. (Other examples: federal, SEC; state, Medical Board)
  - b. They are administered under the Executive Branches of government.
  - c. Their actions can be reviewed by the Judicial Branch of government
  - d. In creating an agency, the Legislative Branch generally delegates all functions of government.
    - i. Legislative: agencies generally have authority to write rules and regulations. (Due Process: notice of rulemaking, opportunity for public comment.)
    - ii. Executive: investigate possible violations (usually complaints) and enforce the law in disciplinary proceedings.
    - iii. Judicial: adjudicate whether a violation has been committed
6. Arkansas State Board of Public Accountancy
  - a. "There is created the Arkansas State Board of Public Accountancy." Ark. Code Ann. § 17-12-201(a).
  - b. "The board shall consist of seven (7) members, appointed by the Governor for terms of five (5) years." Ark. Code Ann. § 17-12-201(b).
  - c. "The Arkansas State Board of Public Accountancy may
    - i. Adopt rules . . .
    - ii. Issue subpoenas . . .
    - iii. Take testimony and receive evidence . . . Ark. Code Ann. § 17-12-203.
  - d. [Specified] acts, conducts, or practices shall be subject to disciplinary action as provided in § 17-12-602 after notice and hearing as provided in § 17-12-603. Ark. Code Ann. § 17-12-601.
  - e. If a licensee . . . is found to have committed an action or omission identified in § 17-12-601, the Arkansas State Board of Public Accountancy may impose any one (1) or more of the following sanctions:
    - i. Suspension, revocation, or denial of his or her license . . . ;
    - ii. A penalty not to exceed ten thousand dollars (\$10,000) for each violation as well as investigation costs incurred by the board;
    - iii. Completion of appropriate education programs or courses;
    - iv. Preissuance review of audits, review reports, or compilations;
    - v. Quality review conducted in such a manner as the board may specify;
    - vi. Successful completion of the licensing examination;
    - vii. Conditions or restrictions upon the license, registration, or practice privilege; and
    - viii. All other requirements or penalties the board finds appropriate to the circumstances of the case and that would achieve the desired disciplinary purposes but that would not impair the public welfare and morals.
  - f. Procedure, generally
    - i. Receive complaint (can initiate proceeding on its own)
    - ii. Send letter requesting response
    - iii. If no response made, can impose discipline
    - iv. Upon receiving response, the Board can

1. Take no further action
2. Request additional information
3. Seek consent to discipline
4. Initiate proceeding under Ark. Code Ann. § 17-12-603
  - a. written notice stating the “nature of the charges,” the time and place of the hearing, served (personally or certified mail, return receipt) not less than thirty (30) days before the hearing;
    - i. On a failure to appear the board may hear evidence and enter an order.
    - ii. But, licensee has 30 days to show good cause for failure to appear.
  - b. Licensee can appear in person and by counsel, produce evidence and witnesses, cross-examine witnesses, and examine evidence. Licensee can apply for issuance of subpoenas to compel the attendance of witnesses.
  - c. Technical rules of evidence not required.
  - d. “At all hearings, the board's legal counsel shall appear and represent the board.”
  - e. Decision by majority vote.
  - f. “Anyone adversely affected by any order of the board shall be entitled to pursue all rights and remedies available under the Arkansas Administrative Procedure Act.”
  - g. APA allows informal resolution. “Nothing in this subchapter shall prohibit informal disposition by stipulation, settlement, consent order, or default.” Ark. Code Ann. § 25-15-208.
- g. Treasury Department has analogous procedures.

7. Noteworthy points

- a. Arkansas State Board of Public Accountancy is not bound by decisions, standards, or practices of
  - i. Treasury Department
  - ii. Other states
  - iii. AICPA
- b. Appellate review is narrow
  - i. The court may affirm . . . or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
    1. In violation of constitutional or statutory provisions;
    2. In excess of the agency's statutory authority;
    3. Made upon unlawful procedure;
    4. Affected by other error or law;
    5. Not supported by substantial evidence of record; or
    6. Arbitrary, capricious, or characterized by abuse of discretion.

Ark. Code Ann. § 25-15-212

# Drake Mann

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### Education:

East Carolina University (B.A.)  
University of Arkansas (J.D.)

### Biography:

Mr. Mann is a shareholder and director of Gill Ragon Owen, P.A. He is a director of the firm's Data Security and Privacy Protection group. The International Association of Privacy Professionals has certified Mr. Mann as a Privacy Law Specialist and designated him a Fellow of Information Privacy. Mr. Mann has served as a law clerk to Associate Justice M. Steele Hays of the Supreme Court of Arkansas and a staff attorney for the Arkansas Securities Department. He is Chairman of the Administrative Law Section of the Arkansas Bar Association, a former Chairman of the Securities Law Section and, a Fellow of the Arkansas Bar Foundation, and a member of the Editorial Advisory Boards of the *Arkansas Lawyer* magazine and the *ATLA Docket* magazine. Mr. Mann is a member of The Sedona Conference® Working Group on Data Security and Privacy Liability (WG11). He served as a director of Priority Bank from 1998-2021. Mr. Mann included in *Best Lawyers*® in America in Administrative and Regulatory Law and Appellate Practice.

### Practice Areas:

- Administrative Law
- Physician, Nurse, and other professional discipline and licensing matters
- Privacy Law ([FIP](#), [CIPT](#), CIPM, [CIPP/US](#)\* [Privacy Law Specialist](#))
- Cloud Computing ((ISC)²: CCSP\*)
- Certified Information Systems Auditor (CISA)
- Litigation
- Appellate Advocacy

\*FIP, CIPT, CIPM, CIPP/US, and CCSP are not certifications in fields of law

