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HEADLINE: #2 2012 TNT 48-2 NEWS ANALYSIS: OPR'S ROLE IN GUIDING PRACTITIONER SANCTIONS. (Release Date: MARCH 07, 2012) (Doc 2012-4798)

ABSTRACT: In news analysis, Jeremiah Coder presents data on the practitioner sanctions proposed by the IRS Office of Professional Responsibility and the actual sanctions ultimately imposed on those practitioners, finding that administrative law judges and the Treasury appellate authority largely adhere to the proposed sanctions.

SUMMARY: Published by Tax Analysts(R)

In news analysis, Jeremiah Coder presents data on the practitioner sanctions proposed by the IRS Office of Professional Responsibility and the actual sanctions ultimately imposed on those practitioners, finding that administrative law judges and the Treasury appellate authority largely adhere to the proposed sanctions.

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The IRS Office of Professional Responsibility was authorized in 2007 to begin disclosing final agency decisions covering Circular 230 proceedings. The growing number of cases that are published on OPR's website has given tax professionals great insight into OPR's thought process as it enforces Circular 230 professional standards.

Data drawn from the available cases seem to show that discipline determined by an administrative law judge and upheld by the appellate authority in Circular 230 proceedings largely adheres to the sanctions proposed by OPR. Some might characterize that trend as deference to the instituting agency, but OPR Director Karen Hawkins prefers to call it validation of the reasonable stance the office takes in its cases. (For prior coverage, see *Tax Notes*, Feb. 27, 2012, p. 1094, *Doc 2012-3492*, or *2012 TNT 35-10*.)

In addition to pushing for determinative sentences when practitioners are disbarred or suspended from practice before the IRS after violating Circular 230, OPR is advocating for clarification of legal principles that either have been untested or have remained in the background for several years. For example, it has used recent cases to urge clarification of the applicable standard of willfulness and to argue that it should have a statute of limitations period longer than five years for bringing disciplinary cases. That in turn has led to the appellate authority issuing rulings establishing clearer limits on OPR's authority and clarifying the procedural aspects of Circular 230 proceedings.

Hawkins has received high praise from the tax bar for her practical approach to practitioner discipline. Her effort to reduce a large backlog of mostly personal tax noncompliance cases for Circular 230 practitioners has been successful, and OPR has focused on quick resolution of outstanding cases by developing soft touches that lead practitioners into filing and payment compliance without having to turn complaints into formal proceedings. That frees up resources for OPR to address more egregious Circular 230 violations, which dovetails with Hawkins's revamping the structure of her office to create investigation teams more like the structure of law firms.

But there is growing concern over how long the changes at OPR will last. Hawkins's tenure is guaranteed only through next spring, and practitioners are hoping that her mark on OPR will result in a transformed institutional mind-set and formal procedures that continue under future officeholders.

The revisions to Circular 230 and its expanding jurisdictional reach ensure that OPR will remain instrumental in enforcing appropriate standards of tax practice. The case statistics presented in the table below warn practitioners that it is best to quickly get into compliance, because OPR has an impressive litigation track record.

Circular 230 Case Sanctions Data

Final Agency Decisions

Case Name: Banister, Joseph R.

Year of Decision: 2004

Alleged Ethical Violation: 10.22(b), 10.22(c), 10.34, 10.51, 10.51(j)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Andrews, Ted E.

Year of Decision: 2007

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 36-month suspension

ALJ's Sanction: 36-month suspension

Appellate Authority's Sanction: 36-month suspension

AA: O'Connor

Case Name: Blum, Harold

Year of Decision: 2008

Alleged Ethical Violation: 10.51, 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Chandler, Martin M.

Year of Decision: 2008

Alleged Ethical Violation: 10.51, 10.51(f)

Sanction Sought by OPR: 33-month suspension

ALJ's Sanction: 18-month suspension

Appellate Authority's Sanction: 36-month suspension

AA: O'Connor

Case Name: DeLiberty, Peter A.

Year of Decision: 2008

Alleged Ethical Violation: 10.51, 10.51(d), 10.52(a)

Sanction Sought by OPR: suspension or disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Diehl, George

Year of Decision: 2008

Alleged Ethical Violation: 10.50(a), 10.51, 10.51(k)

Sanction Sought by OPR: disbarment

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ALJ's Sanction: 6-month suspension

Appellate Authority's Sanction: 6-month suspension

AA: O'Connor

Case Name: Fein, Leonard

Year of Decision: 2008

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 24-month suspension

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: 24-month suspension

AA: O'Connor

Case Name: Francis, Kevin

Year of Decision: 2008

Alleged Ethical Violation: 10.20(a), 10.22(a), 10.22(b), 10.51(b), 10.51(f), 10.51(i)

Sanction Sought by OPR: 30-month suspension

ALJ's Sanction: 30-month suspension

Appellate Authority's Sanction: 18-month suspension

AA: O'Connor

Case Name: Friedman, Milton G.

Year of Decision: 2008

Alleged Ethical Violation: 10.51(h)

Sanction Sought by OPR: 18-month suspension

ALJ's Sanction: 12-month suspension

Appellate Authority's Sanction: 12-month suspension

AA: O'Connor

Case Name: Guthrie, Wayne N.

Year of Decision: 2008

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: 48-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Hubbard, Murphy M.

Year of Decision: 2008

Alleged Ethical Violation: N/A

Sanction Sought by OPR: N/A

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Jacobs, Jay P.

Year of Decision: 2008

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Jones, Robert Alan

Year of Decision: 2008

Alleged Ethical Violation: 10.22(a)(1)(2)(3), 10.51(d)(j)

Sanction Sought by OPR: 24-month suspension

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Ohendalski, Richard S.

Year of Decision: 2008

Alleged Ethical Violation: 10.51, 10.52(a)

Sanction Sought by OPR: 24-month suspension

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: 48-month suspension

AA: O'Connor

Case Name: Settles, Thomas E.

Year of Decision: 2008

Alleged Ethical Violation: 10.22, 10.33, 10.34, 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Yoder, Daniel L.

Year of Decision: 2008

Alleged Ethical Violation: 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Davis, Edwin, Jr.

Year of Decision: 2009

Alleged Ethical Violation: 10.50, 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Gonzales, Juanita A.

Year of Decision: 2009

Alleged Ethical Violation: 10.51(f), 10.52(a)

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: 36-month suspension

Appellate Authority's Sanction: 36-month suspension

AA: Pinsky

Case Name: Hurwitz, Harold

Year of Decision: 2009

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 36-month suspension

ALJ's Sanction: 36-month suspension

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Llorente, Alex J.

Year of Decision: 2009

Alleged Ethical Violation: 10.51, 10.51(d), 10.51(f)

Sanction Sought by OPR: N/A

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Moose, Richard E.

Year of Decision: 2009

Alleged Ethical Violation: 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: O'Connor

Case Name: Panitz, Philip G.

Year of Decision: 2009

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 12-month suspension

ALJ's Sanction: dismissed

Appellate Authority's Sanction: no appeal

Case Name: Sykes, John M., III

Year of Decision: 2009

Alleged Ethical Violation: 10.22(a), 10.22(c), 10.52(a)

Sanction Sought by OPR: 12-month suspension

ALJ's Sanction: dismissed

Appellate Authority's Sanction: no appeal

Case Name: Everett, James J.

Year of Decision: 2010

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Kaskey, Tim W.

Year of Decision: 2010

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: Pinsky

Case Name: Kilduff, Kevin

Year of Decision: 2010

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: 48-month suspension

AA: Pinsky

Case Name: Koenig, Phillip E.

Year of Decision: 2010

Alleged Ethical Violation: 10.51, 10.51(d), 10.51(f)

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: disbarment

Appellate Authority's Sanction: 48-month suspension

AA: Pinsky

Case Name: Navatsyk, Donald A.

Year of Decision: 2010

Alleged Ethical Violation: 10.50, 10.51(f), 10.51(a)(4), 10.51(a)(6)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Salisbury, Kirk G.

Year of Decision: 2010

Alleged Ethical Violation: 10.51(a), 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: Pinsky

Case Name: Baldwin, Timothy L.

Year of Decision: 2011

Alleged Ethical Violation: 10.2(a)(1), 10.51

Sanction Sought by OPR: 32-month suspension

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: 24-month suspension

AA: Weberman

Case Name: Barr, James E.

Year of Decision: 2011

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: 40-month suspension

AA: Weberman

Case Name: Coston, Dwayne H.

Year of Decision: 2011

Alleged Ethical Violation: 10.51(f), 10.51(a)(6), 10.20

Sanction Sought by OPR: disbarment

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: disbarment

AA: Weberman

Case Name: Craft, C. Wesley

Year of Decision: 2011

Alleged Ethical Violation: 10.5

Sanction Sought by OPR: disbarment

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: disbarment

AA: Weberman

Case Name: Gee, Edgar H., Jr.

Year of Decision: 2011

Alleged Ethical Violation: 10.50, 10.51, 10.70

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: Weberman

Case Name: Hernandez, Luis R.

Year of Decision: 2011

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: 40-month suspension

AA: Weberman

Case Name: Kozelsky, Joseph G.

Year of Decision: 2011

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: Weberman

Case Name: Lee, Lilly Y.

Year of Decision: 2011

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 40-month suspension

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: 36-month suspension

AA: Weberman

Case Name: Legel, Lawrence

Year of Decision: 2011

Alleged Ethical Violation: 10.50, 10.51

Sanction Sought by OPR: indefinite suspension

ALJ's Sanction: suspension*

Appellate Authority's Sanction: 36-month suspension

AA: Weberman

Case Name: Petrillo, Donald J.

Year of Decision: 2011

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: disbarment

AA: Weberman

Case Name: Ross, Walter H.

Year of Decision: 2011

Alleged Ethical Violation: 10.51(a)

Sanction Sought by OPR: indefinite suspension

ALJ's Sanction: indefinite suspension

Appellate Authority's Sanction: no appeal

Case Name: Tuttle, Wallace H.

Year of Decision: 2011

Alleged Ethical Violation: 10.51(a)(6), 10.51(d)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Final Agency Default Decisions

Case Name: Blum, Harold

Year of Decision: 2007

Alleged Ethical Violation: 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Dobkin, Michael A.

Year of Decision: 2007

Alleged Ethical Violation: 10.51(f)

Sanction Sought by OPR: suspension

ALJ's Sanction: 48-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Marcus, Alan R.

Year of Decision: 2007

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Marks, Robert
Year of Decision: 2007
Alleged Ethical Violation: 10.51
Sanction Sought by OPR: disbarment
ALJ's Sanction: disbarment
Appellate Authority's Sanction: no appeal

Case Name: Ohendalski, Richard S.
Year of Decision: 2007
Alleged Ethical Violation: 10.51
Sanction Sought by OPR: 24-month suspension
ALJ's Sanction: 24-month suspension
Appellate Authority's Sanction: no appeal

Case Name: Ellis, Armistead W., Jr.
Year of Decision: 2008
Alleged Ethical Violation: 10.51
Sanction Sought by OPR: disbarment
ALJ's Sanction: 48-month suspension
Appellate Authority's Sanction: no appeal

Case Name: Gittleson, June
Year of Decision: 2008

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 36-month suspension

ALJ's Sanction: 36-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Napolitano, James P.

Year of Decision: 2008

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: 48-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Stewart, Charles G.

Year of Decision: 2008

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: 48-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Bidwell, Larry C.

Year of Decision: 2009

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: 36-month suspension

ALJ's Sanction: 36-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Bujan, Frank M., Jr.

Year of Decision: 2009

Alleged Ethical Violation: 10.51(d), 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Escobar, John A.

Year of Decision: 2009

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: McDaniel, John C.

Year of Decision: 2009

Alleged Ethical Violation: 10.51, 10.51(d), 10.51(f)

Sanction Sought by OPR: 24-month suspension

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Rafferty, Michael F.

Year of Decision: 2009

Alleged Ethical Violation: 10.51, 10.51(6)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Solovy, Dean E.

Year of Decision: 2009

Alleged Ethical Violation: 10.51(d), 10.51(f)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Suits, Jennifer K.

Year of Decision: 2009

Alleged Ethical Violation: 10.51, 10.51(d)

Sanction Sought by OPR: 48-month suspension

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Sutton, Elbert L.

Year of Decision: 2009

Alleged Ethical Violation: 10.51(d), 10.51(f)

Sanction Sought by OPR: 24-month suspension

ALJ's Sanction: 24-month suspension

Appellate Authority's Sanction: no appeal

Case Name: Hillerman, Marjorie J.

Year of Decision: 2010

Alleged Ethical Violation: 10.50(a), 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Purnell, Jeffrey W.

Year of Decision: 2010

Alleged Ethical Violation: 10.51

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Case Name: Tomsha-Miquel, Susan R.

Year of Decision: 2011

Alleged Ethical Violation: 10.51(f), 10.51(a)(6)

Sanction Sought by OPR: disbarment

ALJ's Sanction: disbarment

Appellate Authority's Sanction: no appeal

Notes: *Suspension until original order lifted (Sept. 29, 2011).

Source: <http://www.irs.gov/taxpros/agents/article/0,,id=177688,00.html> (both final agency and default decisions), last visited Dec. 31, 2011.
